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RAPID TRANSIT ACT

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Laws 1891, chapter 4; as amended by Laws 1892, chapters 102 and 550; Laws 1894, chapters 528 and 752; Laws 1895, chapter 519; Laws 1896, chapter 729; Laws 1898, chapter 616; Laws 1901, chapter 587; Laws 1902, chapters 533, 542, 544 and 584; Laws 1904, chapters 562 and 564; Laws 1905, chapters 599 and 631; Laws 1906, chapters 472, 606 and 607; Laws 1907, chapter 534; Laws 1908, chapter 472; Laws 1909, chapter 498; Laws 1910, chapters 205, 504, 505, and 506; Laws 1911, chapter 888 and Laws 1912, chapter 226

LAWS 1891, CHAPTER 4

An Act to Provide for Rapid Transit Railways in Cities of over One Million Inhabitants

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION
FOR THE FIRST DISTRICT
1912

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RAPID TRANSIT ACT

Laws 1891, chapter 4; as amended by Laws 1892, chapters 102 and 556; Laws 1894, chapters 528 and 752; Laws 1895, chapter 519; Laws 1896, chapter 729; Laws 1900, chapter 616; Laws 1901, chapter 587; Laws 1902, chapters 533, 542, 544 and 584; Laws 1904, chapters 562 and 564; Laws 1905, chapters 599 and 631; Laws 1906, chapters 472, 606 and 607; Laws 1907, chapter 534; Laws 1908, chapter 472; Laws 1909, chapter 498; Laws 1910, chapters 205, 504, 505 and 506; Laws 1911, chapter 888, and Laws 1912, chapter 226

LAWS 1891, CHAP. 4.

AN ACT to provide for rapid transit railways in cities of over one million inhabitants.

Approved by the Governor, January 31, 1891. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. [Repealed. Laws 1907, chapter 429] *

§ 2. [Repealed. Laws 1907, chapter 429]

§ 3. [Repealed. Laws 1907, chapter 429]

§ 4. **Public service commission to determine necessity 4-1 for railroads; routes; plan; consents; parks and streets excepted.** (1) The public service commission of the first district upon its own motion may proceed, from time to time, to consider and determine whether it is for the interest of the public and of a city having over one million of

* In regard to incidental powers see subdivision 2 of Section 5 of Public Service Commissions Law.

4-1 inhabitants, according to the last preceding national or state census, that a rapid transit railroad or railroads for the conveyance and transportation of persons and property should be established therein, and upon the request in writing of the local authorities of any such city at any time, the said commission shall proceed forthwith to consider and determine the same questions, and in each case the said commission shall conduct such an inquest and investigation as may be deemed necessary in the premises. If, after any such consideration and inquest, the said commission shall determine that a rapid transit railroad or railroads, in addition to any already existing, authorized or proposed, are necessary for the interest of the public, and such city, it shall proceed to determine and establish the route or routes thereof and the general plan of construction. Such general plan shall show the general mode of operation and contain such details as to manner of construction as may be necessary to show the extent to which any street, avenue or other public place is to be encroached upon and the property abutting thereon affected. The commission, from time to time, may locate the route or routes of such railroad or railroads over, under, upon, through and across any streets, avenues, bridges, viaducts, rivers, waters and lands within such city, including blocks between streets or avenues, or partly over, under, upon, through and across any streets, avenues, bridges, viaducts, and lands within such city and partly through blocks between streets or avenues; provided that the consent of the owners of one-half in value of the property bounded on and the consent also of the local authorities having control of that portion of a street, bridge, viaduct, or highway, upon which it is proposed to construct or operate such railroad or railroads be first obtained, or in case the consent of such property owners can not be obtained, that the determination of three commissioners appointed by the appellate division of the supreme court in the department of the proposed construction, given after due hearing of all parties interested, and confirmed by the

court, that such railroad or railroads ought to be constructed or operated, be taken in lieu of the consent of such property owners; except that no public park nor any lands or places, lawfully set apart for, or occupied by, any public building of any city or county, or of the state of New York, or of the United States, nor those portions of Grand, Clason, Franklin avenues and Downing street in the borough of Brooklyn, city of New York, lying between the southerly line of Lexington avenue and northerly line of Atlantic avenue, nor that portion of Classon avenue in said borough lying between the northerly line of Lexington avenue and southerly line of Park avenue, nor that portion of Washington avenue in said borough lying between Park and Atlantic avenues, nor that portion of Nostrand avenue in said borough lying northerly of the northerly line of Eastern parkway, nor Debevoise place, Irving place and Lefferts place, Lee avenue, Waverly avenue, Vanderbilt avenue and Clinton avenue in said borough of Brooklyn, nor that portion of the city of Buffalo lying between Michigan and Main streets, nor any part of Fifth avenue, in the borough of Manhattan, city of New York, nor that portion of any street or avenue which is now actually occupied by any elevated railroad structure, shall be occupied by any corporation for the purpose of constructing a railroad in or upon any of such public parks, lands or places, or upon or along either of the said excepted streets or avenues. It shall be lawful for said commissioners to locate the route of a railroad or railroads by tunnel under any such public parks, lands, places, rivers or waters and to locate the route of any railroad to be built, under this act, across any of the streets and avenues now occupied by an elevated railroad structure in the city of New York, or across any of the streets or avenues excepted in this act at any point at which, in its discretion, the public service commission may deem necessary in the location of any route or routes, or under, or under and along any of the said streets or avenues now so occupied or so excepted in this act. Nothing

4-1 in this act shall authorize the construction of an elevated railroad on Broadway south of Thirty-third street, nor on Madison avenue in the borough of Manhattan, city of New York. It shall not be lawful to grant, use or occupy, for the purposes of an elevated railroad, except for the purpose of crossing the same, any portion of the following named streets and places in the borough of Manhattan, city of New York, that is to say: Second avenue, below Twenty-third street; Fourteenth street, between the easterly line or side of Seventh avenue, and the westerly side of Fourth avenue; nor Eleventh street, west of Seventh avenue, nor any part of Bank street; Nassau street; Printing House square, so called, south of Franklin street; Park Row, south of Tryon row; Broad street and Wall street.* (*Laws 1891, ch. 4, § 4, as amended by L. 1894, ch. 528, § 1; L. 1894, ch. 752, § 10; L. 1895, ch. 519, § 1; L. 1900, ch. 616; L. 1904, ch. 564, § 1; L. 1909, ch. 498, § 1; L. 1910, ch. 505, and L. 1912, ch. 226, § 1.*)

2 The provisions of the said section four of the said act shall, with reference to any rapid transit railroad for which routes and a general plan have been heretofore adopted by the board of rapid transit railroad commissioners of any city, and for the municipal construction of which a contract has been heretofore made by any city, be deemed to have been in full force as hereby amended from before the time when the routes and general plan for which such railroad or railroads were so adopted by the board of rapid transit railroad commissioners. (*Added by Laws 1900, ch. 616, as amended by L. 1912, ch. 226, § 1.*)

§ 5. Approval and consent of board of estimate and apportionment, or other board; consent of local authorities.

* Other streets in the city of New York are exempted by the following statutes:

Laws 1888, ch. 256, as am'd by L. 1894, ch. 518, exempts West End Avenue above 72d Street, Cathedral Parkway, Morningside Park and streets "bounding on Morningside Park in the City of New York, except Tenth Avenue and Manhattan Avenue;" but "necessary crossings at the intersection thereof with other streets or avenues" are permitted.

† So in original

1. After any determination by the public service commission of any such route or routes and of any general plan of construction of said railroad or railroads, the commission shall transmit to the board of estimate and apportionment or other board or boards of said city having the control of any street, highway, boulevard, driveway, bridge, tunnel, park, parkway, dock, bulkhead, wharf, pier or public grounds or water which is within or belongs to the city, a copy of said plans and conclusions as adopted. It shall be the duty of such board of estimate and apportionment and of every other such board or boards having such control, upon receiving such copy of plans and conclusions, to appoint a day not less than one week nor more than ten days after the receipt thereof for the consideration of such plans and conclusions, and the said board of estimate and apportionment and every other such board or boards having such control shall, on the day so fixed, proceed with the consideration thereof and may continue and adjourn such consideration, from time to time, until a final vote shall be taken thereon, as hereinafter provided. Within sixty days after the copy of such plans and conclusions adopted by the commission shall have first been received by said board of estimate and apportionment or such other board or boards having such control, a final vote shall be taken thereon, by ayes and nays, according to the number of votes by law pertaining to each member of any such board in the form of a vote upon a resolution to approve such plans and conclusions and to consent to the construction of a railroad or railroads in accordance therewith.

2. Upon the adoption of such a resolution by a majority vote of all the members of the said board of estimate and apportionment or other such board or boards having such control, according to the number of votes by law pertaining to each member of any such board and the approval of the mayor, the said plans and conclusions shall be deemed to have been finally consented to and adopted, and such consent shall be deemed to be the consent of the local authori-

5-2 ties of such city; provided, that where in any such city the exclusive control of any street, road, bridge, viaduct, highway or avenue which is to be used or occupied by any railroad or railroads constructed under the provisions of this act, is by law vested in any local authority other than the board of estimate and apportionment of such city, the approval of the aforesaid plans and conclusions and the consent to the construction of a railroad thereunder shall be given by such local authority in place of and, if required, in addition to such approval and consent by said board of estimate and apportionment and with like effect.

3. Upon obtaining the approval and consent of the local authorities as above provided the public service commission shall also, unless such approval and consent of local authorities shall have been refused, take the necessary steps to obtain, if possible, the said consents of the property owners along the line of the said route or routes. For the purposes of this act the value of the property bounded on that portion of any street or highway in, upon, over or under which it is proposed to construct or operate such railroad or railroads, or any part thereof, shall be ascertained and determined from the assessment roll of the city in which the said property is situated, confirmed or completed last before the local authorities shall have given their consent, as above provided. If such consents of property owners can not be obtained, the commission may, in its own name, make application to the appellate division of the supreme court in the department in which such railroad is to be constructed for the appointment of three commissioners to determine and report after due hearing whether such railroad ought to be constructed and operated. Three weeks' notice of such application shall be given by publication thereof once in each week in two daily newspapers published in the city where such proposed railroad is to be constructed, if there be so many newspapers published in said city, and if not, then in all the daily newspapers published in said city. The newspapers in which said publication

shall be made shall be designated by the appellate division of the supreme court to which such application is to be made on the application of the commission without notice.

4. The said appellate division upon due proof of the publication aforesaid, shall appoint three disinterested persons who shall act as commissioners, and such commissioners within ten days after their appointment shall cause public notice to be given in the manner directed by the said appellate division of their first sitting, and may adjourn from time to time until all their business is completed. Vacancies in such commission may be filled by said appellate division after such notice to persons interested as the appellate division may deem proper, and the evidence taken before as well as after such vacancy occurred shall be deemed to be property before such commissioners. The said commissioners shall determine after public hearing of all parties interested whether such railroad ought to be constructed and operated and shall report the evidence taken to said appellate division, together with a report of their determination whether such road ought to be constructed and operated, which report, if in favor of the construction and operation of such road, shall, when confirmed by said court, be taken in lieu of the consent of the property owners above mentioned. Such report shall be made within sixty days after the appointment of said commissioners, unless the said court, or a judge thereof, shall extend such time.

5. The board of estimate and apportionment of the city of New York shall, with respect to that city, be hereafter for all purposes of this act and be deemed to be the local authority in control of the streets, roads, bridges, viaducts, highways, avenues, boulevards, driveways, parks, parkways, docks, bulkheads, wharfs, piers and public grounds and waters which are within or belong to the said city; and the consent of such board of estimate and apportionment and the mayor, without the consent of the common council, board of aldermen or other board or officer of the city, shall

* So in original

be the only consent of local authorities required hereunder.* (*Laws 1891, ch. 4, § 5, as amended by L. 1895, ch. 519, § 2; L. 1904, ch. 564, § 2; L. 1905, ch. 631, § 1, and L. 1909, ch. 498, § 1.*)

6-1 § 6. **Detail plans; tunnels for pipes and wires; work affecting sewers and other sub-surface structures.** I. When the consents of the local authorities and the property owners, or, in lieu thereof, the authorization of the said appellate division of the supreme court upon the report of commissioners, shall have been obtained, the public service commission shall at once proceed to prepare detailed plans and specifications for the construction of such rapid transit railroad or railroads in accordance with the general plan of construction, including all devices and appurtenances deemed by it necessary to secure the greatest efficiency, public convenience and safety, including the number, location and description of stations and plans and specifications for the suitable supports, turnouts, switches, sidings, connections, landing places, buildings, platforms, stairways, elevators, telegraph and signal devices, and other suitable appliances incidental and requisite to what the commission may approve as the best and most efficient system of rapid transit in view of the public needs and requirements, including in its discretion operation of such railroad or railroads or some portion thereof by any device or means, other than separate cars or trains, in the construction of which stationary means for guiding a conveyance in a definite path and means for propelling such conveyance are necessary elements, and the commission may, in its discretion, include in said plans provisions for galleries,

* Prior to the amendment of 1905, which took effect May 26, 1905, this section provided that a copy of the plans and conclusions of the rapid transit board should be transmitted "to the common council of said city." Chapter 631, Laws of 1905, § 2, provides as follows:

§ 2. This act and all the amendments hereby made to the sections thereof hereby amended, shall be applicable to every grant, franchise or contract heretofore made, authorized or issued by the said board of rapid transit railroad commissioners but not yet consented to by the common council or board of aldermen of the city, as well as to all grants, franchises and contracts hereafter made, authorized or issued by the said board of rapid transit railroad commissioners.

ways, subways or tunnels for sewers, gas or water pipes, electric wires and other sub-surface structures and conductors proper to be placed underground, whenever necessary so to do, in order to permit of the proper construction of any railroad herein provided for in accordance with the plans and specifications of the board of rapid transit railroad commissioners or of the commission, or for any other purpose in furtherance of the public interest or convenience.

2. Stations and station approaches may be under or over streets of the route or cross streets, and the board of aldermen, or other legislative body, of any such city shall have power to regulate by general or special ordinance or resolution, the erection, alteration and maintenance upon or in connection with any building used, wholly or in part, for station purposes, or approaches, or any and all structures or parts of structures extending over the whole or any part of any sidewalk or sidewalks adjacent thereto. The commission may, from time to time, alter such detailed plans and specifications, but always so that the same shall accord with the general plan of construction; but whenever a contract shall have been made for the construction of any railroad herein provided for, no such alteration shall be made by the commission without the consent of the contractor and his sureties, except as liberty shall have been reserved in such contract by said board of rapid transit railroad commissioners or by the commission for such alteration.

3. Whenever the construction of any railroad, depressed way, subway or tunnel under the provisions of this act shall interfere with, disturb or endanger any sewer, waterpipe, gaspipe, or other duly authorized sub-surface structure, the work of construction at such points shall be conducted in accordance with the reasonable requirements of the officer or local authority having the care of and the jurisdiction or control over such sub-surface structures so interfered with, disturbed or endangered.

4. Where under the direction of the commission or in

6-4 pursuance of any general plan adopted or of any contract made by the said board or the commission, galleries, ways, subways or tunnels shall be constructed to contain sewers, pipes or other sub-surface structures, the said galleries, ways, subways or tunnels shall be maintained by the said city and shall be in the care and charge of the commission and subject to such regulations as it shall prescribe not inconsistent with the provisions of this act, and any revenue derived therefrom shall be paid into the treasury of said city, except that where bonds shall have been issued to provide for the cost of construction or equipment of such railroads, such amounts shall be paid into the sinking fund of the city, if there be one, or if not then into the sinking fund to be established and created out of the annual rentals of said road, as provided in section thirty-seven of this act. Provided, however, that any person or corporation who or which at the time of the construction of the said galleries, ways, subways, or tunnels shall own pipes, subways or conduits in a street, avenue or public place in which said galleries, ways, subways or tunnels shall be constructed pursuant to this act, shall be entitled to the use of such galleries, ways, subways or tunnels for his or its said pipes, subway or conduits in the same manner as the said person or corporation shall be entitled by law to the use of such street, avenue or public place, and that no rent shall be charged for such use, except a reasonable charge to defray the actual cost of maintenance, unless such pipes, subways or conduits shall be of greater capacity than those theretofore owned by such person or corporation in said street, avenue or public place, and that, if the capacity of any such pipe, subway or conduit, so placed in the said galleries, ways, subways or tunnels shall be increased, the rent shall be charged only for such increased capacity; and provided further, that the placing in any such galleries, ways, subways or tunnels of the subways or conduits of any corporation owning subways or conduits for electrical conductors, shall not in any wise affect the right of such corporation to charge and demand such compensation or rent for the

use of said subways or conduits by other corporations or individuals as is, or may be, permitted by law. 6-4

5. Nothing in this section or contained in the act hereby amended shall be construed as granting, enlarging, changing, or in any manner validating any right, privilege or franchise, or any claimed or alleged right, privilege or franchise, to maintain, operate, or possess any gas mains, pipes or conductors, or any conduits or conductors for transmission of electricity, or any sub-surface structures of any name or nature whatever, in any street, avenue, highway or public place in such city. (*Laws 1891, ch. 4, § 6, as amended by L. 1894, ch. 752, § 4; L. 1895, ch. 519, § 3; L. 1896, ch. 729; § 1; L. 1902, ch. 542; L. 1906, ch. 472, § 2; L. 1909, ch. 498, § 1, and L. 1910, ch. 205, § 1.*)

§ 7. [Repealed. *Laws of 1909, chapter 498, § 2*]

§ 8. [Repealed. *Laws of 1909, chapter 498, § 2*]

§ 9. **Offices and assistants for commission; actions by commission.** 1. The said commission may rent such offices and employ such engineers, attorneys and other persons, from time to time, as it may, in its discretion, deem necessary to the proper performance by it of its duties as in this act prescribed. It may sue in the name and behalf of the city for which it acts as a commission. It may in the name of and in behalf of the said city bring action of specific performance or may apply by mandamus to compel the performance within said city by any corporation or person of any duty or obligation with reference to or arising out of the construction or operation of any railroad under, or by reason of, any grant made or right acquired under this act or the acts amendatory hereof or supplementary hereto, or out of or by reason of any contract made or authorized by any board of rapid transit railroad commissioners within its city or the public service commission, or it may in behalf of and in the name of said city bring actions to recover damages for any violation of contract or duty, or for any wrong committed by any such corporation or person by reason of any non-performance or violation of duty under the provisions of this act or under any contract or stipulation made in pursuance of any provisions of this act.

9-2 2. Every action or proceeding brought by the commission, and every action or proceeding in which an injunction is had or sought against the commission or the said city, or against any corporation or person who or which shall have entered into a contract under the provisions of this act, or any act supplementary hereto, or amendatory hereof, by reason of any act or thing done, proposed or threatened under or by virtue of any provision of this act, or any act supplementary hereto, or amendatory hereof, or is sought against any corporation or person claiming or claiming to act under any grant or franchise under this act, or any act supplementary hereto, or amendatory hereof, and every action or proceeding in which the constitutionality of any part of this act, or of any act supplementary hereto, or amendatory hereof, shall or may be brought in question, shall have a preference above all causes not criminal on the calendar of every court, and may be brought on for trial or argument upon notice of eight days for any day of any term on which the court shall be in session. (*Laws 1891, ch. 4, § 9, as amended, L. 1894, ch. 752, § 6; L. 1895, ch. 519, § 5, and L. 1909, ch. 498, § 4.*)

§ 10. Appropriation for commission; audit and payment of expenditures; bonds. The board of estimate and apportionment or other board or public body on which is imposed the duty, and in which is vested the power, of making appropriations of public moneys for the purposes of the city government in any city in which it is proposed to construct such railroad or railroads shall, from time to time, on requisition duly made by the public service commission, appropriate such sum or sums of money as may be requisite and necessary to properly enable it to do and perform, or cause to be done and performed, the duties herein prescribed, and such appropriations shall be made forthwith upon presentation of a requisition from the public service commission, which shall state the purposes for which such moneys are required by the commission. In case the said board of estimate and apportionment or such other board

or public body fail to appropriate such amount as the public service commission deem requisite and necessary, the commission may apply to the appellate division of the supreme court, in the department in which the railroad is to be or has been constructed, on notice to the board of estimate and apportionment, or such other board or public body aforesaid, to determine what amount shall be appropriated for the purposes required by this section, and the decision of said appellate division shall be final and conclusive; and no city shall be liable for any indebtedness incurred by the commission in excess of such appropriation or appropriations. It shall be the duty of the auditor and comptroller of any such city, after such appropriations shall have been duly made, to audit and pay the proper expenditures of said commission upon vouchers therefor, to be furnished by the said commission, which payments shall be made in like manner as payments are now made by the auditor, comptroller, or other public officers, of claims against and demands upon such city; and for the purpose of providing funds with which to pay the said sums, the comptroller or other chief financial officer of said city is hereby authorized and directed to issue and sell revenue bonds of such city in anticipation of receipt of taxes, and out of the proceeds of such bonds to make the payments in this section required to be made. The amount necessary to pay the principal and interest of such bonds shall be included in the estimates of moneys necessary to be raised by taxation to carry on the business of said city, and shall be made a part of the tax levy for the year next following the year in which such appropriations are made. If the said commission shall determine that part of its expenses shall be included in determining the cost of construction of a railroad constructed under sections twenty-six, twenty-seven, twenty-nine or thirty-three of this act, then and in that event the said board of estimate and apportionment or other board or public body upon the requisition of the commission duly made may appropriate such sum or sums of

10 money as may be requisite and necessary for such part of its expenses and authorize the issue of corporate stock for such purposes, and it shall thereupon become the duty of the comptroller of said city to issue and sell corporate stock of the city for such purposes. (*Laws 1891, ch. 4, § 10, as amended by L. 1894, ch. 752, § 7; L. 1909, ch. 498, § 4, and L. 1912, ch. 226, § 2.*)

- § 11. [Repealed. *Laws of 1909, chapter 498, § 2*]
- § 12. [Repealed. *Laws of 1909, chapter 498, § 2*]
- § 13. [Repealed. *Laws of 1909, chapter 498, § 2*]
- § 14. [Repealed. *Laws of 1909, chapter 498, § 2*]
- § 15. [Repealed. *Laws of 1909, chapter 498, § 2*]
- § 16. [Repealed. *Laws of 1909, chapter 498, § 2*]
- § 17. [Repealed. *Laws of 1909, chapter 498, § 2*]
- § 18. [Repealed. *Laws of 1909, chapter 498, § 2*]
- § 19. [Repealed. *Laws of 1909, chapter 498, § 2*]
- § 20. [Repealed. *Laws of 1909, chapter 498, § 2*]
- § 21. [Repealed. *Laws of 1909, chapter 498, § 2*]
- § 22. [Repealed. *Laws of 1909, chapter 498, § 2*]

§ 20. **Real estate; proceedings to acquire title.** Every corporation which shall have taken or shall take or hold any franchise or contract to construct, maintain and operate a railroad under the provisions of this act shall have the right to acquire and hold such real estate or easement or other interest therein, or rights appurtenant thereto, as may be necessary to enable it to construct, maintain and operate the said railroad or railroads and such as may be necessary for stations, depots, engine houses, car houses, machine shops and other appurtenances; and in case any such corporation cannot agree with the owner or owners of such property it shall have the right to acquire title to the same in pursuance of the terms and in the manner prescribed in title one of chapter twenty-three of the code of civil procedure known as the condemnation law. When any corporation authorized under any provision of this act to construct, maintain or operate an additional track or tracks added to any existing elevated railroad or to construct, maintain or operate an extension of such railroad

or to acquire terminal or other facilities for any such railroad or extension shall have duly instituted condemnation proceedings, under the provisions of chapter twenty-three of the code of civil procedure, by serving a petition and notice in said proceedings, to acquire such real estate or easements therein, or rights appurtenant thereto, as may be necessary to construct, maintain or operate such additional track or tracks, extension or terminal or other facilities, the court, upon due hearing had at a special term of the supreme court held in the judicial district where the property or some portion of it is situated, and upon notice in said proceedings served upon all the owners of the property at least eight days prior to said hearing, in the manner prescribed in title one of chapter twenty-three of the code of civil procedure for the service of the petition and notice, may, where it appears to its satisfaction that the public interests will be *prejudicial by delay, direct that the plaintiff be permitted to enter immediately upon the real property to be taken and devote it temporarily to the public use specified in the petition, upon depositing with the court such sum or giving an undertaking in such amount and subject to such conditions as the court may deem sufficient to secure the payment of the award that may be made, and the costs and the expenses of the proceedings and for the payment of any damages which the defendant in such proceedings may have sustained by such entry upon and use of his property; but the sum so deposited or undertaking so given shall be at least equal to twice the assessed valuation, if any, of any real estate to be so taken. The court may, at any time, upon like hearing and notice given by either party to said proceedings, give such further directions in respect to any such deposit, undertaking or condition as it may deem just and proper, and in every case the owner may conduct the proceedings to a conclusion if the plaintiff delays or neglects to prosecute the same and if the sum so deposited or security so given shall be

* So in original

20 insufficient to pay the said award and said costs, expenses and damages, and if the plaintiff shall fail to pay the amount of such deficiency, judgment shall be entered against the plaintiff for the deficiency and the possession of the property shall be restored to the defendant. (*Former section 23, Laws 1891, ch. 4, § 23, as amended by L. 1909, ch. 498, § 4 and L. 1910, ch. 506.*)

§ 21. Corporate powers. Every such corporation shall have power:

1. To take and hold such voluntary grants of real estate and other property as shall be made to it, to aid in the construction, maintenance and accommodation of its railroad or railroads, but the real estate received by voluntary grant shall be held and used for the purposes of such grant only.

2. To purchase, lease, hold and use all such real estate and other property as may be necessary for the construction and maintenance of its railroad or railroads, and the stations or other accommodations necessary to accomplish the objects of its incorporation.

3. To cross, intersect, join and unite its railroad or railroads with any other railroad at any point on its route and upon the grounds of such other railroad company, with the necessary turnouts, sidings and switches and other conveniences in furtherance of the objects of its connections.

4. To take and convey persons and property on its railroad or railroads by the power or force of electricity or compressed air so used as to involve no combustion or impurity of air in tunnels or cars or any other power of like description approved by the commission, and to receive compensation therefor.

5. To enter upon and underneath the several streets, avenues, public places and lands designated by the said board of rapid transit railroad commissioners or the public service commission, and enter into and upon the soil of the same; to construct, maintain, operate and use, in accordance with the plan adopted by said board or commission, a railroad or railroads upon the route or routes and

to the points decided upon, and to secure the necessary foundations and erect the columns, piers and other structures which may be required to secure safety and stability in the construction and maintenance of the railroads constructed upon the plan adopted by the said board or commission, and which may be necessary for operating the same, except that nothing in this act shall authorize the construction of a railroad crossing the track of any steam railroad in actual operation at the grade thereof, and it shall be lawful to make such excavations and openings along the route through which such railroad or railroads shall be constructed as shall be necessary from time to time; in all cases the surface of said streets around such foundations, piers and columns shall be restored to the condition in which they were before such excavations were made, as near as may be, and under the direction of the proper local authorities; and in all cases the use of the streets, avenues, places and lands designated by the said board or commission, and the right of way through the same, for the purpose of a railroad or railroads, as herein authorized and provided, shall be considered, and is hereby declared, to be a public use, consistent with the uses for which the roads, streets, avenues and public places are publicly held; but no such corporation shall have the right to acquire the use or occupancy of public parks or squares in such county, or the use or occupancy of any of the streets or avenues, except such as may have been designated for the route or routes of such railroad, and except such temporary privileges as the proper authorities may grant to such corporations to facilitate such construction. (*Former section 24, Laws 1891, ch. 4, § 24, as amended by L. 1892, ch. 556, § 4, and L. 1909, ch. 498, § 4.*)

- § 25. [Repealed. Laws of 1909, chapter 498, § 2.]
- § 26. [Repealed. Laws of 1909, chapter 498, § 2.]
- § 27. [Repealed. Laws of 1909, chapter 498, § 2.]
- § 28. [Repealed. Laws of 1909, chapter 498, § 2.]
- § 29. [Repealed. Laws of 1909, chapter 498, § 2.]
- § 30. [Repealed. Laws of 1909, chapter 498, § 2.]
- § 31. [Repealed. Laws of 1909, chapter 498, § 2.]

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§ 22. **Private construction; franchise to construct, maintain and operate.** 1. If or when the necessary consents have been obtained and the detailed plans and specifications have been prepared, either by the board of rapid transit railroad commissioners or by the commission, for the said rapid transit railroad, the commission may with the approval of the board of estimate and apportionment or other analogous authority of such city, grant a franchise to construct, maintain and operate such railroad for the transportation of passengers and property for compensation. The commission shall have power to prescribe all such terms and conditions of such grant and to require such security to be given and filed for the keeping and performance of such terms and conditions as it may deem to be for the interest of the public and of the city and may provide that in connection with the construction of such railroad by the grantee at its own expense any galleries, ways, subways or tunnels for sub-surface structures which may be included in any such plans shall be also constructed by the grantee at the public expense, and in such case the sum or sums to be paid therefor shall be separately stated and the amount appropriated and paid out of the funds hereafter authorized to be provided in case of such construction, and the commission may provide separately for the maintenance, supervision, care and operation of the same as hereinafter authorized under the provisions of section twenty-seven.

2. The grant shall provide that such railroad shall be constructed by and at the expense of the grantee under the direction and supervision of the commission and in accordance with such detailed plans and specifications; that the construction shall be begun within a time to be specified and shall be finished within a specified time thereafter; and that operation of said railroad shall be begun within a specified time, and may fix the time within which portions of the said railroad shall be begun and finished and

put in operation, and may provide that the commission may extend the time of beginning, of completion and of operation of such railroad or portion thereof, and that if the grantee shall fail to begin or to finish the construction or begin the operation of said road or portion thereof at or within any time so fixed, or shall fail to comply with any of the terms or conditions of such grant, a penalty specified, or the grant and any construction pursuant thereto, may be forfeited to the city.

3. Such grant shall contain a reservation to the city of the privilege upon giving a specified notice to terminate such franchise and to purchase and take the plant and property of the grantee suitable to and used for the purpose of such railroad at any time after the expiration of ten years from the date when operation of any part of said railroad shall begin upon paying an amount for said plant and property as property, excluding any value for the franchise, which amount shall not exceed actual cost of said plant and property, plus fifteen per centum thereof, and shall decrease under provisions of the grant as the franchise continues so that at the end of the full term of the grant no amount shall be paid except for equipment as hereinafter provided. The grant shall provide a method of ascertaining the amount to be paid for such plant and property upon termination by the city of said franchise and for the equipment of said railroad at the end of the full term of the grant, and the grant may provide for determining from time to time, in default of agreement, by arbitration or by the court, a valuation of such plant and property, or any part or portion thereof, for any purpose under said grant. The grant shall make adequate provision for lien upon plant and property and by way of penalty or forfeiture of the grant and any construction pursuant thereto or otherwise to secure compliance with the terms of said grant, efficiency of service at reasonable rates and the maintenance of the property in good condition throughout the full term of the grant.

4. The grant shall provide that any and all income and

22-4 increase derived by the grantee or his assignee or any successive holder of the grant or on his or their behalf in any manner from or in connection with the enterprise of constructing, equipping and operating the said railroad shall after deducting operating expenses, taxes, payments to reserve and amortization funds as provided for in said grant, and not exceeding six per centum interest per annum payable quarterly upon the actual cost of construction and equipment of such road, be divided share and share alike between the grantee and the city, and that upon the expiration of the period specified in the grant the franchise shall end and the plant and property suitable to and used for the purposes of said railroad, except equipment as defined in the grant, shall become the property of the city without compensation to the grantee, and that such equipment shall also become the property of the city upon payment to the grantee of an amount to be ascertained as provided in the grant. The grant may also provide for assuring that in case a new grant of a franchise to maintain and operate the said railroad is made after any such termination of said franchise and purchase and taking of said plant and property pursuant to such notice or after the expiration of the full term of the grant, that the title to and possession of the plant and property so taken and of the equipment at the end of such full term may be transferred directly to the new grantee upon his paying the amount required as aforesaid. At any time within one year prior to the date when the franchise shall be terminated or forfeited by the city or shall come to an end by the expiration of full term or at any time thereafter, the commission may with the approval of the board of estimate and apportionment, or such other local authority, grant a new franchise under the provisions of this section for the construction wholly or in part of such railroad and for the maintenance and operation of the same from and after the date of such termination, forfeiture or end of such grant, or the commission may with like approval enter into contracts for the equipment, maintenance or operation of said railroad, or may itself

operate said road, after such termination, forfeiture or end of said grant as hereinafter provided in sections twenty-seven to thirty-one in respect of railroads constructed at the public expense.

5. A certificate shall be prepared by the said commission attested by its seal and the signature of its presiding officer, setting forth in detail the action taken and grant made by the said commission with respect to such railroad, and the terms and conditions aforesaid which shall be delivered to said grantee upon the receipt by said commission of a written acceptance of the terms, conditions and requirements of the grant duly executed by said grantee so as to entitle it to be recorded. The said certificate shall be filed in the office of the secretary of state and a duly certified copy thereof shall be filed in the office of the clerk of the county in which the said railroad or some part thereof is situated and upon the fulfillment by such grantee of such terms, conditions and requirements enumerated in such certificate as the commission may require to be fulfilled as a condition precedent to commencing said work, the grantee shall in such cases possess in addition to its existing powers, all the powers conferred by this article upon corporations receiving a grant of a franchise thereunder with respect to the railroad so authorized to be constructed as aforesaid and when such certificate shall have been duly filed, such grantee may construct the said railroad with all the rights provided in said certificate but in every case subject to all the provisions and conditions of said certificate. The certificate so prepared by the commission as aforesaid when delivered to and accepted by said grantee shall be deemed to constitute a contract between the city and said grantee according to the terms of said certificate and such contract shall be enforceable by the commission acting in the name of and in behalf of said city, or by the grantee according to the terms thereof, but subject to the provisions of this act. The terms of such contract may from time to time with like approval and with the consent of the grantee be modified by the commission.

22-6 6. Any existing railroad corporation owning or actually operating a railroad wholly or in part within the limits of the city and approved by the said commission shall be competent and is hereby authorized to bid for and receive any grant pursuant to the provisions of this section. If the successful bidder or bidders be not a corporation, then a corporation may be organized under the railroad law by him or them for the purpose of receiving such grant and of constructing, equipping, maintaining and operating a railroad pursuant to the terms of any such certificate and a corporation so organized shall not be required to procure the certificate or approval of the public service commission as provided for in section fifty-nine of the railroad law or section fifty-three of the public service commissions law.

7. After the proposed certificate shall have been prepared and approved as to the form thereof by the board of estimate and apportionment, or other such local authority of said city, the commission shall, prior to the granting of any such franchise, advertise for proposals or bids for such franchise under such certificate by a notice to be printed once a week for two successive weeks in not less than two daily newspapers published in said city, and in such newspapers published elsewhere than in said city as said commission shall determine, and may require security from bidders for the execution of their bids if accepted. Such notice shall set forth the points within said city between which such railroad is proposed to be operated, the route or routes, in general terms, to be followed, and such other details and specifications as the commission shall deem proper, and shall refer to such proposed certificate and the said routes, detailed plans and specifications on file in its office for further details. Said notice shall state the time and place at which proposals will be received and opened. All such proposals shall refer to said proposed certificate and shall offer the terms upon which any such proposer or bidder shall undertake to construct, maintain, equip and operate said railroad in so far as to set forth all or any of the following matters as may be required by the com-

mission: (1) the annual interest desired upon the cost of construction and equipment prior to payment of any part of income or increase to the city; (2) the period at the end of which the plant and property except equipment as aforesaid shall become the property of the city without compensation; (3) the amount of money for which galleries for subsurface structures to be paid for with public money in connection with the construction of such railroad will be constructed; (4) such transfer conveniences with other roads, specifications as to the cost of construction and other provisions as the commission may think proper to require. The commission shall attend at the time and place specified and shall publicly open all proposals that shall have been received, but the commission shall not be bound to accept any proposals so received, but may reject all such proposals and readvertise for proposals in the manner hereinbefore provided, or may accept any of such proposals as will, in the judgment of said commission, best promote the public interest, and grant a franchise and execute such certificate accordingly, subject to the approval of the board of estimate and apportionment, or other such analogous authority of such city. (*New section added by L. 1909, ch. 498, § 5.*)

§23. Power to fix connecting routes and extend lines. 1. The public service commission may also from time to time, as in this section hereinafter provided, with the approval of the board of estimate and apportionment, or other analogous local authority of such city, grant a right or rights, franchise or franchises or enter into a contract or contracts, upon application to said commission of any railroad corporation, now or hereafter incorporated, for the purpose of constructing and operating a tunnel railroad or railroads from an adjoining state under the North or Hudson or Harlem river to a terminus within such city; or under the North or Hudson river and thence transversely across and under the surface of the borough of Manhattan and thence under the East river by the shortest practicable route; such railroad or railroads to be connected with some trunk line

23-1 railroad or railroads whose terminus or termini are in this or an adjoining state, thereby forming a continuous line for the carriage of passengers and property.

2. A similar grant may be made, or a similar contract or contracts entered into, upon the application of a railroad corporation, owning or actually operating a trunk line railroad whose terminus or termini are within such city, or of a railroad corporation owning or actually operating, or by the certificate of the board of rapid transit railroad commissioners or the public service commission hereinafter in this section mentioned required to own or actually operate, a railroad wholly or partly within said city and engaged or intended, and in said certificate so recited and required, to be, in interstate commerce in connection with a trunk line railroad and which shall have, or be required by such certificate to have a terminus or termini in said city, for the purpose of constructing and operating a railroad or railroads from such terminus or termini by the shortest practicable route to and under or over the East river or the North or Hudson river, or the Harlem river, to any point in this or an adjoining state, or to connect such terminus or termini with the railroad or terminus of any other such railroad or trunk line railroad in this state or to straighten or improve the grade or alignment of any such railroad or more directly connect any points thereon.

3. If and when in the judgment of said commission the public interests so demand, the commission may, with like approval, fix and determine the route or routes by which any such railroad corporation making such application may so establish and construct or so extend its lines into or within said city, and may authorize any such railroad corporation to construct and operate any such railroad or connecting railroad under any lands, streets, avenues, waters, rivers, parkways, highways or public places in the said city, and also in the case of any such railroad or connecting railroad which is, or by the terms of the said certificate of the said board of rapid transit railroad commissioners or the public service commission is required to be,

operated or used as a part of an interstate trunk line, to construct and operate the same over and across any such lands, waters, rivers, streets, avenues, parkways, highways or public places in the said city, but not over and lengthwise of any streets, avenues or highways, with all necessary sidings, platforms, stations, facilities for access to the surface and other appurtenances and with the right to emerge to the surface upon private lands at the termini, and to transport over the same passengers or freight or both and to run over the same either passenger trains or freight trains or mixed trains.

4. The commission shall, with like approval, fix and determine the locations and plans of construction of the railroad or railroads upon such route or routes, the times within which they shall be respectively constructed, the compensation to be made therefor to the city by the railroad corporation to which the grant shall be made, or with which the contract shall be entered into, and such other terms, conditions and requirements as to the commission may appear just and proper, provided, however, that every such grant shall be made and every such contract entered into upon the condition that the railroad corporation to which the grant shall be made or with which the contract shall be entered into shall, from the time of the commencement of the operation of any such railroad, annually pay to the said city a sum or rental, and that the amount of such sum or rental for a period of not more than twenty-five years, beginning with such operation of any such railroad, shall be prescribed by the commission in such grant or contract and that every such grant or contract shall provide for the readjustment of the amount of such sum or rental at the expiration of the period for which the same shall be so prescribed and for readjustment from time to time in the future of the amount of such annual payment at intervals each of not more than twenty-five years. The grant may also provide that the city shall have the right after the expiration of a period fixed in the grant which

23-4 shall not be more than twenty-five years from the date on which operation of any portion of said railroad shall commence to purchase and take the right or franchise so granted and any tunnel and railroad thereby authorized, or any portion of such tunnel and railroad, provided the city shall determine that said tunnel and railroad or such portion of said tunnel and railroad is necessary or desirable for use as part of some municipal system of rapid transit to be owned by the city, upon giving a specified notice and upon payment of the value of such tunnel and railroad, or portion of tunnel and railroad, but not including the franchise thereby granted, nor to exceed the actual cost in money of construction thereof and of property connected therewith. The grant may provide in default of agreement thereon for ascertainment and determination by arbitration or by the court of the amount to be paid by the city therefor. This act shall be deemed to have been in full force as hereby amended from before the time when any certificate has been granted by the board of rapid transit railroad commissioners or by said public service commission authorizing the construction and operation of any tunnel and railroad under the provisions of this section, and shall be deemed to have authorized any right heretofore given to any city in or by any such certificate granted as aforesaid to purchase and take any tunnel and railroad, or any portion of said tunnel and railroad, and every such certificate is as to such right given thereby hereby ratified and confirmed.

5. A certificate shall be prepared by the commission attested by its seal and the signature of its presiding officer, setting forth in detail the action taken and grant made or contract entered into by the commission with respect to such railroad or railroads and the terms, conditions and requirements aforesaid, including provisions as to the said annual payments and the future readjustments thereof. A like certificate shall be prepared in like manner upon every modification of the terms of the grant or contract as herein-

after provided. Each such certificate shall prescribe the terms and conditions of the readjustments of such annual payments and may provide for the determination of such amount upon such readjustments by arbitration or by the supreme court. Such certificate shall be delivered to said railroad corporation upon the receipt by said commission of a written acceptance of the terms, conditions and requirements of the grant or contract, duly executed by said railroad corporation, so as to entitle it to be recorded.

6. The said certificate shall be filed in the office of the secretary of state and a duly certified copy thereof shall be filed in the office of the clerk of the county in which the said city is situated, and thereupon, and upon fulfillment by such railroad corporation, so far as it relates to such railroad or railroads, of such of the requirements and conditions as are necessary to be fulfilled in such cases, under section eighteen of article three of the constitution of this state, and upon fulfillment by such railroad corporation of such other terms, conditions and requirements enumerated in said certificate, as the said *board commission may require to be fulfilled as a condition precedent to commencing said work, said railroad corporation shall in such cases possess in addition to its already existing franchises all the powers conferred by this act upon corporations with respect to its railroads authorized to be constructed as aforesaid, and when any route or routes, rights or franchises, shall be so fixed and determined, and a certificate as aforesaid shall have been duly filed, such railroad corporation may construct the same with all the rights, and with like effect as though the same had been a part of the original route of its railroad then in actual operation, or as may be provided in said certificate, but in every case subject to all the provisions and conditions of the said certificate. Every certificate prepared by the board of rapid transit railroad commissioners or the public service commission as aforesaid when delivered to and accepted by such railroad cor-

* So in original

23-6 poration, shall be deemed to constitute a contract between the said city and said railroad corporation, according to the terms of said certificate; and such contract shall be enforceable by the commission acting in the name of and in behalf of the said city or by the said corporation according to the terms thereof, but subject to the provisions of this act. The terms of such contract may from time to time, with like approval and with the consent of such corporation, be modified by the commission.

7. But the construction and operation of such railroad or railroads are authorized only upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having control of that portion of a street or highway upon, above or under which it is proposed to construct or operate the same, be first obtained, provided that such local authorities shall, upon the presentation to them of any such grant or contract, without requiring the execution of any other agreements than those herein provided for, either approve or disapprove the same; and every such approval shall be and be deemed to be, free of all limitations except those contained in this act or the constitution of the state. In case the consent of such property owners can not be obtained, the appellate division of the supreme court in the department in which such railroad or railroads are proposed to be constructed, may, upon application, in the same manner and on the same notice specified in section five of this act, appoint three commissioners, who shall determine after a hearing of all parties interested, whether the same ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of such property owners.

8. No grant or contract shall be made hereunder affecting in any way the liabilities and obligations of the grantee or contracting railroad corporation with reference to taxation for state or local purposes. The state of New York shall not be liable for injuries to persons

or property in connection with any railroad or other construction which may be authorized under the provisions of this act, nor shall the state of New York be liable for any damages in any event for any act or omission of the public service commission. (*Former section 32. Laws 1891, ch. 4, § 32, as amended by L. 1895, ch. 519, § 8; L. 1902, ch. 584; L. 1906, ch. 472, § 3; L. 1906, ch. 606 and L. 1909, ch. 498, § 6.*)

§ 24. Connections with other railroads, stations and ferries. 1. The public service commission may also from time to time, with the approval of the board of estimate and apportionment, upon application of any person, firm or corporation owning, leasing, constructing or actually operating or having the right by contract to thereafter operate a railroad wholly or in part within the limits of the city in which the commission has power to act, if in the judgment of said commission, the public interests so demand, fix and determine the route or routes by which any such person, firm or corporation may connect with other railroads, or the stations thereof, or with ferries or bridges, or may extend his or its lines or lines which he or it operates or has the right to operate as aforesaid within said city, or upon the application of a corporation organized under the railroad law for any of the purposes specified in subdivision nine of section twenty-seven of this act, and agreeing to equip, maintain and operate or to procure to be equipped, maintained and operated any road or roads of the city in connection with any existing railroad of a railroad corporation and any extension or extensions thereof wholly within such city, on the basis of a division of income, earnings or profits as hereinafter provided, the commission may with like approval, if in the judgment of the commission the public interests so demand, fix and determine the route or routes by which such corporation may construct, maintain and operate such extension or extensions, and may, with like approval, authorize such corporation to construct, maintain and operate such extension, and may with like approval au-

24-1 thorize any such person, firm or corporation to lay an additional track or tracks on, above, under or contiguous to a portion or the whole of the route or routes of his or its railroad or railroads within said city and to acquire terminal or other facilities necessary for the accommodation of the traveling public on any street or place except the place known as Battery park on which said railroad shall be located; and may also with like approval authorize any such person, firm or corporation to lay his or its tracks and operate his or its railroad to any terminal or terminals within the said city, and to transport over the same passengers or freight or both, and to run over the same either passenger trains or freight trains or mixed trains; and the commission shall with like approval fix and determine the locations and plans of construction of the railroads upon such route or routes and of such tracks and facilities, the times within which they shall be respectively constructed, the compensation to be made therefor to the city by said person, firm or corporation, and such other terms, conditions and requirements as to the said boards may appear just and proper, provided, however, that every such determination, authorization and license shall be made upon the condition that such person, firm or corporation shall from the time of the commencement of the operation of any such railroad or track or tracks under such determination, authorization or license, annually pay to the said city a sum or rental which may be a part or proportion of gross or net receipts, and that the amount of such sum or rental for a period of not more than twenty-five years, beginning with such operation of any such railroad, track or tracks, shall be prescribed by the commission in such determination, authorization and license, and that every such determination, authorization and license shall provide for the readjustment of the amount of such sum or rental at the expiration of the period for which the same shall be so prescribed and for readjustment from time to

time in the future, to the end of the period of renewal, if any, of the amount of such annual payment at intervals each of not more than twenty years; provided further, however, that such determination, authorization or license may provide that for the whole or any portion of the life of the grant in lieu of such annual rental the gross or net receipts derived from the operation of such railroad owned, operated or to be operated by the said person, firm or corporation within the limits of said city, and from the operation of such connecting or extending route or routes, additional track or tracks or facilities may be combined, and that the city may receive as such compensation at intervals named a specified part or proportion of the income, earnings or profits of the railroad, and the route or routes, additional track or tracks or facilities whose receipts are so combined or of those and any other railroads which may be operated in connection therewith in like manner, which part or proportion may be deferred to a previous distribution to said person, firm or corporation, which distribution may be cumulative, and in such case such determination, authorization or license may apportion out of the amount so to be received by the city and shall specify a portion thereof which shall be deemed to be the rental for the use of such route or routes, additional track or tracks or facilities, and shall also provide for determining the amount of the income, earnings or profits of the railroad within the limits of the city and of the route or routes, additional track or tracks or facilities whose receipts are so combined and may provide for readjustment of the proportion which the city shall receive or of the portion thereof which shall be deemed to be the rental for the use of said route or routes, additional track or tracks or facilities at specified intervals, and may prescribe a method of determining by arbitration or by the court the amount which the city shall receive as its proportion of such income, earnings or profits or as such rental upon any such readjustment thereof. Such determination, authorization or license

24-1 shall contain a reservation to the city of the privilege, upon giving a specified notice, to terminate the franchise, right or authority granted under this section as to all, and if deemed advisable as to any specified portion or portions of such route or routes, additional track or tracks or facilities, and to purchase and take the plant and property as defined in the grant at any time after the expiration of ten years from the date when operation of any part of said route or routes, additional track or tracks or facilities or of such specified portion thereof shall actually begin, upon paying an amount for said plant and property as property, excluding any value for the franchise, right or authority, which amount shall not exceed actual cost as defined in the grant of said plant and property plus fifteen per centum thereof and shall decrease under provisions of the grant as the franchise continues, so that at the end of the full term of the grant or at the end of a period specified therein, no amount shall be paid except for betterments, additions, improvements and additional equipment as hereinafter provided. The grant shall provide a method of ascertaining the amount to be paid for said plant and property on termination by the city of the said franchise, right or authority and for the betterments, additions, improvements and additional equipment at the end of the full term of the grant, and may provide for determining from time to time in default of agreement by arbitration or by the court a valuation of such plant and property or any part or portion thereof for any purpose under such grant. Such determination, authorization or license may also make suitable provision to the end that if the city shall after so terminating such franchise, right or authority or at the end of the full term of the grant propose to give a new franchise, right or authority in the enjoyment of which said plant and property or any part thereof may be utilized, the title to and possession of said plant and property or any part thereof may be transferred directly to the grantee of any such new franchise, right or authority when the said new grantee shall pay the amount

so required; provided, however, that in the case of additional track or tracks added to any existing elevated rapid transit railroad, the determination, authorization or license may provide that said privilege of the city to terminate the franchise, right or authority therefor and to purchase and take the plant and property shall not be for railroad transit operation either by the city or by any other party, and shall be without prejudice to the rights of the said person, firm or corporation in the lines of said existing elevated railroad, and may make adequate provision for the protection of such rights. The commission may with like approval authorize the relocation of any existing tracks, structures, stations and appurtenances of such person, firm or corporation in any street or avenue in which the same now exist, such relocated structure to be held under all the terms and privileges of the original franchise.

2. A certificate shall be prepared by the commission, attested by its seal and the signature of its presiding officer, setting forth in detail the action taken by the commission with respect to such connecting or extended route or routes and such tracks and facilities, and the terms, conditions and requirements aforesaid, including provisions as to the said annual payments and the future readjustments thereof. A like certificate shall be prepared in like manner upon every modification of the terms of the contract as herein-after provided. Every such certificate shall prescribe the terms and conditions of the readjustments of such annual payments and may provide for the determination of such amount upon such readjustments by arbitration or by the supreme court. Such certificate shall be delivered to said person, firm or corporation upon the receipt by said commission of a written acceptance of said terms, conditions and requirements, duly executed by said person, firm or corporation, so as to entitle it to be recorded.

3. The said certificates shall be filed in the office of the secretary of state, and a duly certified copy thereof shall be filed in the office of the clerk of each county to which

24-3 the said privileges granted hereunder pertain, and thereupon, and upon fulfillment, by such person, firm or corporation, so far as it relates to such connections, additional track or tracks, or facilities, of such of the requirements and conditions as are necessary to be fulfilled in such cases, under section eighteen of article three of the constitution of this state, and upon fulfillment by such person, firm or corporation of such other terms, conditions and requirements enumerated in said certificate, as the commission may require to be fulfilled as a condition precedent to commencing said work, said person, firm or corporation shall in such cases possess in addition to existing franchises all the powers conferred by this act upon corporations with respect to his or its railroads authorized to be constructed as aforesaid, and when any route or routes, additional track or tracks, or terminal or other facilities, shall be so fixed and determined, and a certificate as aforesaid shall have been duly filed, such person, firm or corporation may construct the same with all the rights, and with like effect as though the same had been a part of the original route of his or its railroad then in actual operation or in process of construction, except that no franchise, right or authority shall be granted under this section to extend any railroad, make any connections, lay any additional track or tracks or acquire any terminal or other facilities for a longer period than the unexpired term of the original grant, franchise or contract of the railroad and any renewal thereof contained in such contract to which such *extension, connection, additional track or tracks, or terminal or other facilities are added, and that any such franchise, right or authority granted hereunder shall also be subject to be terminated by the city in like manner and under the same terms and conditions and at the same time or times as may be provided in such original grant for the termination or taking by the city of that grant if provision therefor be made.

4. The certificate or certificates prepared by the commis-

* So in original

sion as aforesaid when delivered and accepted by such person, firm or corporation shall be deemed to constitute a contract between the said city and said person, firm or corporation according to the terms of the said certificate; and such contract shall be enforceable by the commission acting in the name of and in behalf of the said city or by the said person, firm or corporation according to the terms thereof, but subject to the provisions of this act. The terms of such contract may from time to time with the consent of such person, firm or corporation, be modified by the commission. In the case of any grant under this section for the extension of any railroad or the making of any connections, or the laying of any additional track or tracks, or the acquisition of any terminal or other facilities under the provisions of this section, the commission may make provision as a condition of the said grant for the termination by the city of the original grant or franchise or contract, for the railroad to which such extension, connection, additional track or tracks or terminal or other facilities are to be added and for the taking over at the same time of the plant and property of the grantee or holder of said original franchise or contract suitable to and used for the purpose of such original grant or contract in connection with the termination of the franchise, right or authority granted under this section, upon giving a specified notice and paying an amount for said plant and property as property, excluding any value for the original franchise or contract, which amount shall not exceed actual cost of said plant and property plus fifteen per cent. thereof and shall decrease under the provisions of the grant made hereunder as the franchise or contract continues, so that at the end of the grant or contract no amount shall be paid except for equipment as defined in the grant. The grant shall provide a method of ascertaining the amount to be paid for such plant and property on termination by the city of the said original franchise or contract or for equipment at the end of the full term thereof, and may provide for determining from time to time in default of agreement by arbitration or by the court

24-4 a valuation of such plant and property or any part or portion thereof for any purpose under said grant. The grant in such case may also make suitable provision to the end that if the city shall after so terminating such original grant or franchise or at the end of the full term thereof propose to grant a new franchise, right or authority in the enjoyment of which said plant and property or any part thereof may be utilized, the title to and possession of the said plant and property or any part thereof may be transferred directly to the grantee of any such new franchise.

5. But the construction and operation of such connections, extensions, additional track or tracks or facilities are hereby authorized only upon condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of that portion of a street or highway upon, above or under which it is proposed to construct or operate the same, be first obtained, or in case the consent of such property owners cannot be obtained, the appellate division of the supreme court in the department in which they are proposed to be constructed, may, upon application, in the same manner, and on the same notice specified in section five of this act, appoint three commissioners who shall determine after a hearing of all the parties interested whether the same ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.

6. Every such certificate granting any franchise, right or authority, as aforesaid, except for additional track or tracks added to any existing elevated rapid transit railroad shall provide that upon the expiration of a period fixed therein the franchise shall end and that upon such termination thereof all the rights of property of the grantee in the streets, avenues, parkways, highways and public places shall cease and terminate without compensation and shall further provide that upon such expiration of such franchise, right or authority the plant and property together with the appurtenances thereto, of the grantee, constructed pursuant

to such certificate, except betterments, additions, improvements and additional equipment as defined in the grant, shall become the property of the city without further or other compensation to the grantee; and that such betterments, additions, improvements and additional equipment shall be and become the property of the city on paying the grantee the amount ascertained as provided pursuant to said certificate. The provisions of this section shall apply to any railroad or railroads constructed, constructing or contracted for under the provisions of section twenty-six of this act and to any person, firm or corporation constructing or operating such railroad or railroads. (*Former section 32a. Laws 1906, ch. 472, § 4, as amended by L. 1909, ch. 498, § 7, and L. 1912, ch. 226, §§ 3-4.*)

§ 25. Interference with other tracks, pipes, sewers and conduits. 1. Wherever or whenever the route selected by the public service commission for the construction of such railroad shall intersect, cross or coincide with any railroad track or tracks occupying the surface of any streets or avenues, or the construction or operation of said railroad shall interfere with any pipes, sewers, subways, or underground conduits or ways, any corporation or any contractor or person constructing any railroad or part of a railroad under any contract made with the board of rapid transit railroad commissioners or the commission, is hereby authorized, for the purpose of constructing the said work, to remove the track or tracks of any such surface railroad or railroads, or any such pipes, sewers, subways, or underground conduits or ways, but the same shall be done in such manner as to interfere as little as possible with the practical operation or workings of such surface railroad or railroads, or the works or business of the owners of any such pipes, sewers, subways, or underground conduits or ways, and upon the construction of such railroads built under and in conformity with the provisions of this act, where such removals or changes have been made, said track or tracks, pipes, sewers, subways, or underground conduits or ways shall be restored as nearly as may be to

25-1 the condition in which they were previous to the construction of any such railroad built under the provisions of this act, and any damages which such company or companies or owners may sustain shall be ascertained by a commission to be appointed the same as in the case where lands are taken for the purpose of a railroad route or routes as hereinbefore provided in this act.

2. For the purpose of the construction or operation of any railroad under the provisions of this act, the public service commission may remove or cause to be removed, any pipes, sewers, subways or underground conduits or ways underneath any street, highway, park, or public place; provided, however, that the same shall be replaced as soon as practicable, either in the same position as before or in a secure and convenient position underneath such street, highway or public place, or underneath such other street, highway or public place as may be approved by the head of the department of public works of the city. Provided, however, that nothing in this section contained shall authorize the permanent removal from any street, highway, park or public place of any subways or conduits for the reception of electrical conductors which shall have been placed in such street, highway or public place prior to the construction of the rapid transit railroad, without the consent of the owner and lessee of such subway or conduit.

3. All such removals and restorations shall be made at the proper cost and charge of such corporation, contractor or person as may have made such removals, but subject to the provisions of its, his or their contract, if any, with the board of rapid transit railroad commissioners or the public service commission. Nothing contained in this act shall authorize any corporation to use the tracks of any horse railroad. For the purpose of facilitating construction, and to diminish the period of occupancy of any street for the transportation of material, any contractor acting under a contract made in pursuance of this act, or of any act supplementary hereto or amendatory hereof, may with the approval of the public service commission, lay upon or over

the surface of any street, temporary tramways, to be used only for the removal of excavated materials or the transportation of materials for use in the construction; provided, however, that any such tramway shall be forthwith removed upon the direction of the public service commission; and provided, further, that this provision shall not be construed to authorize the construction or operation of any street railroad or to grant to any corporation, association or individual the right to lay down railroad tracks. (*Former section 33. Laws 1891, ch. 4, § 33, as amended by L. 1895, ch. 519, § 9; L. 1896, ch. 729, § 2; L. 1904, ch. 564, § 3 and L. 1909, ch. 498, § 8*)

§ 26. Municipal construction; public service commission in a city formed by consolidation. 1. It shall be the duty of said public service commission to consider the routes, plans and specifications, if any, previously laid out and adopted by them or their predecessors, and for which the consents have been obtained referred to in section five of this act; and either to proceed with the construction of such railroad or railroads, and provide for the operation of the same, as hereinafter provided, or to change and modify the said routes, plans or specifications in such particulars as to said commission may seem to be desirable, or from time to time and with or without reference to former routes or plans to adopt other or different or additional routes, plans and specifications for such railroad or railroads, provided always, that in all cases in which any such change or modification shall be of such character as to require the consents thereto referred to in section five of this act; and in all cases where other or different routes or general plans may have been so adopted the commission shall proceed to secure the consents required to be obtained by said section five of this act as herein set forth. The public service commission shall, prior to the time of the final grant of any franchise under the provisions of this act or the making of a contract for construction of any railroad under the provisions of this act, have power to rescind and revoke any resolution or resolutions of such commission or its

26-1 predecessors adopting any routes or general plan for a rapid transit railroad adopted by such commission or its predecessors and, in the discretion of such commission, in lieu thereof to adopt new routes and general plan. Every such rescindment or revocation which shall have been heretofore made by said commission or its predecessors shall be deemed to have been lawful and authorized by this act, as the same was in effect prior to the present amendment hereof.

2. As soon as such consents, where necessary, shall have been obtained for any rapid transit railroad or railroads and the detailed plans and specifications have been prepared as provided in section six of this act, the said commission, for and in behalf of said city, may enter into a contract or contracts with any person or persons, firm or firms, or corporation or corporations, which in the opinion of said commission shall be best qualified to fulfill and carry out said contract or contracts for the construction of such road or roads, including such galleries, ways, subways and tunnels, for subsurface structures as said commission may include in the plans for such road or roads under the authority of section six of this act, upon the routes and in accordance with the plans and specifications so adopted, for such sum or sums of money, to be raised and paid out of the treasury of said city, as hereinafter provided, or to be contributed in part or in whole for the construction of such road or roads by the contractor having the contract for the equipment and operation of such road or roads as a consideration for the making of such contract for equipment and operation as hereinafter provided. Such contract for construction shall contain such terms and conditions, not inconsistent with the aforesaid plans and specifications, as said commission shall determine to be best for the public interests. The sum or sums of money to be paid for the construction of such road or roads shall be separately stated in the contract or contracts from the sum or sums to be paid for any galleries, ways, subways or tunnels for subsurface structures, the construction of which

is provided for in such contract or contracts. And said commission may in any case contract for the construction of the whole road, or all the roads provided for by the aforesaid plans in a single contract, or may by separate contracts, executed from time to time, or at the same time, with one or more such persons, firms or corporations, provide for the construction of a part or parts of said road or roads or for the construction at first of two or more tracks over a part or parts of such road or roads and afterwards of one or more additional tracks over a part or parts of such road or roads as the necessities of said city and the increase of its population or the advantageous and economical performance of the work may in the judgment of said commission require; or the said commission may in its discretion by separate contracts executed from time to time or at the same time contract with one or more persons, firms or corporations for the performance of any kind or kinds of work or any portion or portions of the work or for the furnishing of any material or materials or for the performance of any labor necessary for or incidental to the construction of the said road or roads or any part or parts thereof.

3. The Commission may also, in a contract for a part of any such rapid transit railroad, insert a provision that at a future time, upon the requirement of the commission, the contractor shall construct the remainder or any part of the remainder of said road, as the growth of population or the interests of the city may, in the judgment of the commission, require and may, in such contract, insert a provision of a method for fixing and ascertaining at such future time the amount to be paid to the contractor for such additional construction, and to the end of such ascertainment may provide for arbitration or for determination by court of the amount of such compensation, or of any other details of construction which shall not be prescribed in the contract, but which shall be deemed necessary or convenient by said commission. Any such contract may provide, if the public interest shall, in the opinion of the commission, justify the

26-3 provision, that the construction of any section or portion of the railroad included in such contract may, with the consent of the commission, be suspended during the term of operation of the railroad as hereinafter mentioned, or any part of such term; provided that during such term or part of term there shall be available for use, in lieu of such portion of the road, a railroad or a portion or section thereof, which shall, with the railroad or portion of railroad constructed under such contract, form a continuous and convenient route.

4. Any such contract may be made for the construction of said road in sections, or for the construction of any section or sections thereof; and, except as herein otherwise provided, every such contract shall specify when the construction of the railroad or the section or sections thereof included therein shall be commenced in each case, and, in each case, the date of completion. The said commission may by any such contract determine when and how the work of construction of the rapid transit railroad or railroads included therein shall proceed. The commission may also provide for the equipment at public expense of such railroad or railroads in connection with the construction thereof, and may include in any contract for construction authorized by this act provision for the equipment, or any part thereof, of such railroad or railroads, but may make a separate contract or contracts for the whole or any part of such equipment with the constructing contractor or contractors or any other responsible persons, firms or corporations. Any such contract, in lieu of requiring the contractor to provide equipment or any part thereof for generation or furnishing of motive power, may authorize the contractor to enter into a subcontract or subcontracts for purchase and delivery as required of motive power for operation of said railroad or railroads, provided such subcontract or subcontracts shall, as to the parties thereto, the sureties thereon and the terms thereof, be first approved by the commission; or any such contract may provide that the construction or completion of equipment, or any portion

thereof, for generation or furnishing of motive power included in said contract, may, with the consent of the commission, be suspended during a period designated, provided that during such period there shall, when required, be available for use, in lieu of such equipment, motive power furnished to the contractor under and pursuant to the terms of a contract for the purchase of power, which contract shall, as to the parties thereto, the sureties thereon and the terms thereof, be first approved by the commission. In case of the expiration or termination, as provided in this act, of the contract for equipment, maintenance and operation of such road, any subcontract for the furnishing of power may be terminated or taken over by the city without making any allowance or paying any amount to the contractor for or on account of any unexpired term of such subcontract. (*Former section 34 added by L. 1894, ch. 752, § 9, as amended by L. 1895, ch. 519, § 10; L. 1896, ch. 729, § 3; L. 1900, ch. 616, § 1; L. 1902, ch. 544; L. 1905, ch. 599, § 1; L. 1906, ch. 472, § 5; L. 1909, ch. 498, § 9; L. 1910, ch. 205, § 2; L. 1912, ch. 226, § 5.*)

§ 27. Contract for equipment, maintenance and operation of road.

1. The public service commission shall, subject to the approval of the board of estimate and apportionment, or other analogous local authority of such city, have full power and authority to provide for the maintenance, supervision, care and operation of the railroad or railroads and also of the aforesaid galleries, ways, subways and tunnels for subsurface structures and all other appurtenances, constructed or to be constructed for and at the expense of such city pursuant to the provisions of this chapter, and may, with like approval, enter into a contract with any person, firm or corporation, who or which in the opinion of said commission shall be best qualified to fulfill and carry out said contract, for the equipment, or any part thereof not provided for pursuant to the next preceding section of this act, of such road or roads, at his or its own cost and expense, and for the maintenance and operation of such road or roads for a term of years to be specified in said contract and not to

27-1 exceed twenty years, or in lieu of such definite term of twenty years the contract may be for a longer period to be fixed by the contract and in such case it shall provide that the city upon giving a specified notice shall have the right to terminate the contract for the equipment, maintenance and operation of such road or roads as to all and if deemed advisable as to any specified portion or portions thereof at any time after the expiration of ten years from the date when operation of any part of such road or roads or of such specified portion thereof shall actually begin, but such right of termination shall be upon condition as follows:

(1.) If the title to the equipment of said railroad or railroads shall not be vested in the city then that the equipment of said railroad or railroads or portion thereof suitable to and used for purposes of such contract shall be purchased and taken by the city at an amount which shall be ascertained as provided in the contract, but which shall not be greater than the actual cost of same plus fifteen per centum thereof and such equipment shall upon such termination of such contract become and be the property of the city on paying to the contractor such amount, or in case the title to the equipment of said railroad or railroads shall be vested in the city then that the city shall pay to the contractor an amount for his investment in the equipment of said railroad or railroads, or portion thereof, which shall not exceed the actual cost to the contractor of the equipment of said railroad or railroads or portion thereof, plus fifteen per centum thereof, and shall decrease under the provisions of the contract as the term thereof continues so that at the end of the full term of the contract no such amount shall be paid except that if additional equipment shall be required and supplied after the railroad, or portion thereof, shall have been put in operation, and if the contract shall provide that title to such additional equipment shall vest in the city when supplied, then the city shall pay an amount for the contractor's investment in such additional equipment which amount shall not exceed the actual cost to the contractor of such additional equipment plus fifteen per centum thereof

and shall diminish so that at the end of the full term of the contract the city shall be required to pay for such investment in additional equipment only such amount as shall be provided in such contract, and

(2.) Upon the further condition if said railroad shall be constructed wholly or in part at the cost of the contractor that the city shall also pay to the contractor an amount for his investment in the construction of said road or portion thereof which shall not exceed the actual cost to the contractor of constructing said road or portion, plus fifteen per centum thereof, and shall decrease under provisions of the contract as the term thereof continues so that at the end of the full term of the contract no such amount shall be paid, except that if betterments, additions or improvements shall be required by the commission or approved by the commission prior to the construction thereof and be constructed wholly or in part at the cost of the contractor, then that the city shall pay an amount for the contractor's investment in such betterments, additions or improvements which shall not exceed the actual cost to the contractor of constructing such betterments, additions or improvements plus fifteen per centum thereof and which amount shall diminish so that at the end of the full term of the contract the city shall be required to pay for such investment in betterments, additions or improvements only such amount as shall be provided in the contract.

The contract shall provide a method of ascertaining the amount to be paid for said equipment and for the contractor's said investment in the construction of said road upon termination by the city of any such contract and for the equipment of such railroad at the end of the full term of the contract, and the contract may provide for determining from time to time in default of agreement by arbitration or by the court a valuation of the contractor's said investment in the construction of said road and of the equipment or any part or portion of either thereof for any purpose under said contract. The contract may provide that the title to the equipment as well as to said road, shall vest in the city

27-1 from the beginning and that the amount to be paid by the city for the contractor's investment in such equipment shall decrease as the term of the contract continues, so that at the end of the full term of the contract no amount shall be payable therefor except for additional equipment as aforesaid.

The contract shall provide that upon the expiration of a period fixed in the contract, the term of said contract shall end without compensation to the contractor except as provided in the contract, for betterments, additions or improvements to any such railroads required to be made or approved by the commission prior to the construction thereof during the term of any such contract, and, if the title to the equipment be not vested in the city, for equipment suitable to and used for the purposes of said contract to the amount if any ascertained as provided in the contract, and that in such event said equipment shall become the property of the city upon payment to the contractor of the said amount or, if the title to the equipment be vested in the city, then an amount for the contractor's investment in additional equipment for any such railroads to be ascertained as provided in the contract. The contract may also provide that the city in exercising the right so to terminate any contract shall for such compensation as may be reasonable and which shall be determined pursuant to the contract permit the contractor whose contract is so terminated or the assignee or lessor of the contractor to use the tracks, structure and line equipment of a portion of such road or roads when necessary or convenient to reach terminals, yards or other facilities of the contractor or such assignee or lessor then located thereon. The contract may also provide for assuring that in case a new contract under this section for equipment and for maintenance and operation of such railroad or railroads is made after such termination pursuant to notice or after the expiration of the full term of the contract that the title to and possession of the equipment so taken and the right to the possession of the railroad so constructed may be transferred directly to the new contractor upon his paying the amount so required.

2. If such contract be made with a railroad corporation organized for the purpose of maintaining and operating a railroad, including the equipment or any part thereof, constructed pursuant to the provisions of this chapter, and which has entered into a contract or contracts for the maintenance and operation of a railroad or railroads theretofore constructed in whole or in part at the expense of the city as in this act provided, and is engaged in the maintenance and operation of the same within such city, and if such contract shall make provision for the equipment, maintenance and operation of such road or roads of the city in connection with the said railroad or railroads theretofore constructed as aforesaid at the expense of the city, and for a single fare, the said corporation and the city may in such contract or by modification of an existing contract or contracts provide that the original term of any contract for operation of the said railroad or railroads theretofore constructed in whole or in part at the expense of the city, may be extended or reduced and any right to a renewal or renewals thereof may be abrogated or waived so that such term as extended or reduced shall become and be co-terminous with the term for equipment, maintenance and operation of such road or roads of the city to be fixed in and by such contract; and that if the city shall elect to terminate the contract for equipment, maintenance and operation of such road or roads as to any line or portion thereof which with a connecting line or portion of the said railroad theretofore constructed and then operated by such corporation shall make a continuous line, then the city may when so terminating such contract as to any such line or portion thereof, take over the said connecting line or portion thereof theretofore constructed in whole or in part at the public expense and then operated by the said railroad corporation and terminate the contract of such corporation as to the same, provided that in lieu of such connecting line or portion thereof so taken over the said corporation shall for the then unexpired term of the contract for operation of the railroad theretofore constructed have the right

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27-2 to maintain and operate without right of recaaption by the city another line of road or portion thereof specified in such contract which with the said lines of the railroad theretofore constructed shall make a continuous line, and the contract shall in such case provide for adjustment between the city and the corporation of the difference in the value of the right to operate the lines or portions thereof so exchanged by agreement or arbitration or by the court and for payment of such difference between them. The city and the corporation may also in such contract provide that if the city shall under any provision of law terminate the contract for the maintenance and operation of the said road or roads of the city after the expiration of ten years from the date when operation of any part of such road or roads shall actually begin, the city may at any time after thirty-five years from said date terminate the said contract or contracts for the maintenance and operation of the railroad or railroads theretofore constructed at the public expense, and take over such railroads upon payment to said company of a sum not exceeding the then present worth of the unexpired portion of the term of said contracts to be ascertained as provided in such contract, which may provide that in default of agreement such sum may be determined by arbitration or by the court.

The contract between the city and such corporation may also provide that in consideration of the operation of the railroads specified *as provided for in such contract and the said railroad or railroads theretofore constructed in whole or in part at public expense in connection with each other for a single fare, and of the payment by said company of moneys to be applied as hereinafter authorized to or toward the construction by the city of the road or roads to be maintained and operated under such contract, and in further consideration of any covenants or agreements by the company to modify the term or terms of its leases or to waive or modify any of the other provisions of its contract or contracts, the gross receipts of the operation of

* So in original

such railroads theretofore constructed and of such road or roads of the city to be maintained and operated under such contract may be combined during the term of such contract, and that the city shall receive for the use of its said additional road or roads at intervals named a specified part or proportion of the income, earnings or profits of the railroads whose receipts are so combined, and in such case the contract may apportion out of the amount so to be received by the city and specify a portion thereof which shall be deemed to be the rental for the use of each of the roads of the city maintained, equipped and operated under said contract. Any such contract shall provide for determining the amount of income, earnings or profits of the railroads whose gross earnings are so combined, and for such considerations may authorize the retention by the said railroad corporation for each year of the term of such contract, prior to the payment of any sums or of any part or portion of the income, earnings or profits to the city as rental for the use of the roads specified or provided for in such contract, of (a) a specified sum of money, which sum may represent the average annual income from operation of the said railroad or railroads theretofore constructed and operated by such corporation for any two or more years; (b) a sum not exceeding six per centum per annum for each year upon the investment of the said company including brokerage charges not exceeding three per centum, in the construction and equipment of the said road or roads of the city to be maintained and operated under such contract; and (c) a sum not exceeding the annual expense or cost to the contractor plus one per centum per annum on account of the contractor's investment in betterments or improvements upon or additions to such road or roads and equipment. Such contract may also provide that such annual payments shall be cumulative, and that any deficiency with respect thereto shall be paid off and discharged annually out of the said gross receipts before any payments by way of rental or compensation for the use of such roads shall be made to the city. (*Added by Laws 1912, ch. 226, § 7.*)

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3. Every such contract shall contain such terms and conditions as to the rates of fare to be charged and the character of services to be furnished and otherwise as said commission shall deem to be best suited to the public interests, and subject to such public supervision and to such conditions, regulations and requirements as may be determined upon by said commission, with like approval; provided, that in case different parts of a road shall be constructed at different times or at intervals of time, or if the contract shall provide for the use by the contractor of an existing railroad as part of a continuous route as aforesaid, then and in any such case the public service commission may, in its discretion, prescribe periods for the operation of the different parts of said road so that at one period of time in the future the commission may be enabled to make a single operating contract or lease of the entire road. The said commission may in its discretion, as one of the terms and conditions of any such contract, provide that as a consideration for the making of such contract the contractor in addition to any sums to be paid as in this act provided by way of rental or otherwise for the use of such road or roads shall contribute a part of the cost of construction of such road or roads which shall be contributed and disbursed by such method, in such manner and at such times as may be provided for in any such contract, and which contribution shall be deemed to be an investment by the contractor in the construction of such road or roads or to be part of the cost to the contractor of constructing such road or roads within the meaning of the first subdivision of this section providing for termination of such contract by the city. Any such contract may provide for the construction during the term of such contract of any branches or extensions of such road or roads and the construction of additional lines and for the equipment and operation thereof by the contractor in connection with the said road or roads and may make separate provision for apportioning the receipts of such road or roads and of such branches, extensions or additional lines and as to the compensation to be

paid to the city for the use of any such branches, extensions or additional lines. The city may enter into a contract for the equipment, maintenance and operation of any such road or roads before contracts for construction of such road or roads or any portion or portions thereof shall have been made, and in such case the contract may provide that the city may construct or complete such road or roads or additions thereto or betterments thereof from time to time at the expense of the city or partly at the expense of the city and partly at the cost or through contribution of the contractor as aforesaid in such proportion as may be agreed upon between the city and the contractor. Such contract for the equipment, maintenance and operation of such road or roads or any portion or portions thereof may be made and entered into as in this act provided before the consents shall have been obtained for any such road or roads or for any portion or portions thereof as provided in section five of this act, and before the detailed plans and specifications shall have been prepared as provided in section six of this act, provided, however, that in such case such contract for equipment, maintenance and operation of such road or roads or any portion or portions thereof shall be upon condition that such contract shall not become operative or go into effect as to such road or roads or such portion or portions thereof unless and until the city shall acquire the right to construct such road or roads or portion or portions thereof by obtaining such consents. The public service commission may in any contract reserve the right, upon conditions and for compensation to the contractor, as provided in the contract, to permit other persons, firms and corporations and the municipality itself to use the tracks, structure and line equipment of the railroad, or any portions thereof.

4. Every such contract shall further provide that the person, firm or corporation so contracting to equip, maintain and operate said road shall annually or at specified intervals pay into the treasury of said city, such rental for the use of said road, as shall be prescribed therein. The

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rental may be either a specified sum of money or a specified part or proportion of income, earnings or profits of such road, or both a sum of money and a part or proportion of income, earnings or profits, as the said commission shall deem best suited to the public interest and the board of estimate and apportionment or other analogous local authority of such city shall approve. Every such contract may further provide that the amount and character of such rental may be readjusted at the expiration of a prescribed period of not more than twenty years, and be readjusted from time to time in the future at intervals each of not more than twenty years, and may prescribe a method of determining by arbitration or by the court of the amount to be paid upon any readjustment thereof. If such contract be made with a person, firm or corporation owning or actually operating or agreeing to operate a railroad or railroads wholly or in part within the limits of the city and shall make provision for the equipment, maintenance and operation of such road or roads of the city in connection with such railroad or railroads and for a single fare, the contract may provide that the gross receipts from the operation of such railroad or railroads within the limits of the city and from the operation of such road or roads of the city may be combined during the term of such contract and that the city shall receive for the use of the said road or roads at intervals named a specified part or proportion of the income, earnings or profits of the railroads whose receipts are so combined and the contract may, in such case, apportion out of the amount so to be received by the city and specify a portion thereof which shall be deemed to be the rental for the use of each of the roads of the city maintained, equipped and operated under such contract. In any such case the contract shall provide for determining the amount of the income, earnings or profits of the railroads whose gross earnings are so combined, and may authorize the retention, prior to the payment of any sums to the city for

or on account of the city's investment in the construction of such road or roads or for the use of the same, of (a) a specified sum of money, which may represent the average annual income from operation of said railroad or railroads theretofore constructed during a period specified in such contract; (b) a sum not exceeding six per centum per annum for each year upon the investment of the contractor, including brokerage charges not exceeding three per centum, in the construction and equipment of the said road or roads of the city to be maintained and operated under such contract, and in the construction and equipment of extensions of any railroads and tracks not owned by the city thereafter constructed and to be operated under such contract; and (c) a sum not exceeding the annual expense or cost to the contractor, plus one per centum per annum, on account of the contractor's investment in betterments or improvements upon, or additions to such road or roads of the city, and upon or to any railroads not owned by the city and operated under such contract, and upon or to the equipment thereof. Such contract may also provide that such payments shall be cumulative, and that any deficiency with respect thereto shall be paid off and discharged annually out of the said gross receipts before any payments by way of rental or compensation for the use of such roads shall be made to the city. The contract may provide for a readjustment at specified intervals of the part or proportion of the said income, earnings or profits of the railroads, which the city shall receive, or of the portion of the amount received by the city which shall be deemed to be the rental of each such road owned by the city, and may prescribe a method of determining by arbitration or by the court the amount which the city shall receive as its part or proportion of such income, earnings or profits or as such rental upon any such readjustment thereof.

5. Such rental and the term for the operation of the railroad included in any such contract shall begin, as to said road, or any section thereof, at such time or times as may

27-5 be provided in the contract. The aforesaid rental shall be paid at such times during each year or at such intervals as said commission shall require. If a contract to equip, maintain and operate such road be made with the person, firm or corporation having or to have the contract to construct the same and such contract shall provide that said road shall be constructed wholly or in part at the cost of the said person, firm or corporation, the said road, however, to be the property of the city in the same manner and to the same extent as if constructed wholly with public money, then the contract may provide as an alternative in lieu of the rental above provided for that any and all income and increase derived by the contractor or on his behalf in any manner from the enterprise of constructing, equipping, maintaining and operating such road, shall after deducting operating expenses, taxes, payments to reserve and amortization funds as provided for in the contract, and not exceeding six per centum interest per annum payable quarterly upon the actual cost to the contractor of construction and equipment of such road, be divided share and share alike between the contractor and the city. The rental and any sums payable under such contract, except any sum or sums of money that may be contributed toward the construction of any road or roads by the contractor having the contract for the equipment and operation of such road or roads, shall be applied first to the payment of the interest upon bonds issued by said city for the construction and equipment of said road as hereinafter provided for, as the same shall accrue and fall due, and the remainder of said rental and moneys not required for the payment of said interest shall be kept separate and apart from any and all other moneys of such city and shall be securely invested and, with the annual accretions of interest thereon, shall constitute a sinking fund for the payment and redemption at maturity of the bonds issued as aforesaid; said rental, moneys and accumulations of said fund over and above so much as may be required for payment of interest and principal of said bonds as aforesaid, shall be paid into the rapid transit fund herein-

after provided for.

6. Any such contract may also provide for a renewal or renewals not to exceed twenty years in the aggregate of the lease of said road upon the expiration of an original term of not more than twenty years upon such terms and conditions, to be approved by the board of estimate and apportionment, or other analogous local authority of such city, as to said commission may seem just and proper, and may also contain provisions for the valuation of the whole or a part of the property of said contracting person, firm or corporation, employed in and about the equipment, maintenance and operation of said road, and for the purchase of the same by the city, at such valuation, or a percentage of the same, should said lease not be so renewed at any time, or should the same be terminated or expire as aforesaid. Such contract shall also state the date on which the operation of the road, or any section thereof, shall commence.

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7. In case the title to the equipment of said road shall not be vested in the city, the city in and for which said road shall be constructed shall also have a first lien upon the rolling stock and other property of said contracting person, firm or corporation, constituting the equipment of said road and used or intended for use in the maintenance and operation of the same, as further security for the faithful performance by such contracting person, firm or corporation of the covenant, conditions and agreements of said contract, on his, their, or its part to be fulfilled and performed, and in case of the breach of any such covenant, condition and agreement said lien shall be subject to foreclosure by action, at the suit of such city, in the same manner, as far as may be, as is then provided by law in the case of foreclosure by action of mortgages on real estate. The commission may, however, from time to time, relieve from such lien, any of the property to which the same may attach, upon receiving additional security, which may be deemed by said commission to be the equivalent of that which it is proposed to release and otherwise upon such terms as to such commission shall seem just.

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8. The said contract shall further provide that in case of the failure or neglect on the part of said contracting person, firm or corporation, after such notice as the contract may prescribe, faithfully to observe, keep and fulfill the conditions, obligations and requirements of said contract, the said city, by the public service commission, may either terminate the contract or take possession of said road and the equipment thereof, and as the agent of said contracting person, firm or corporation, either maintain and operate said road, or enter into a contract with some other person, firm or corporation for the maintenance and operation thereof, and the said contract shall contain such terms, conditions and provisions in relation thereto as the said commission shall deem necessary or desirable for adequately safeguarding and protecting the rights and interests of said city; and the said contract shall contain appropriate terms, conditions and provisions for accomplishing such termination or taking possession.

9. Any existing railroad corporation owning or actually operating a railroad wholly or in part within the limits of the city in and for which said commission has power to act, and approved by the commission, shall be competent and is hereby authorized to enter into any contract for the equipment, maintenance and operation of any railroad pursuant to the provisions of this chapter, or, after such a contract shall have been made, shall be competent and is hereby authorized, with the approval of the commission, to contract with the original contractor or his assignee or assignees for the maintenance and operation (including the equipment or any part thereof of any railroad constructed or in process of construction or to be constructed pursuant to the provisions of this chapter, and shall have all the powers necessary to the due performance of such contract. A corporation may be organized under the railroad law of this state, for the purpose of constructing, equipping, maintaining and operating a railroad pursuant to the provisions of this act or for the purpose of maintaining and operating a railroad (including the equipment or any part

thereof) already constructed, in process of construction or to be constructed pursuant to the provisions of this act; and any corporation so organized, upon the approval in writing of the commission, shall, in addition to the powers conferred by the general act under which such corporation is organized, be empowered, and is hereby authorized to enter into any contract permitted by law for the maintenance and operation when constructed, including the equipment or any part thereof if desired, as the case may be, of any such railroad owned or to be owned by the city, constructed or to be constructed at the expense of the city or of such corporation or both as in this act provided. The certificate of such approval shall be filed in the office of the secretary of state, and a copy thereof certified to be a true copy by the secretary of state or his deputy, shall be evidence of the fact therein stated. A corporation so organized shall not be required to procure the consent of the public service commission as provided for in section nine of the railroad law.

10. Where in this section or in section twenty-six of this act the consents referred to in section five of this act are mentioned, they shall be construed to include any consent given by the commissioners appointed by the general term or appellate division of the supreme court, and confirmed by the said general term or appellate division in lieu of the consent of property owners as hereinbefore provided. (*Former section 34a, added by L. 1906, ch. 472, § 6, as amended by L. 1909, ch. 498, § 10; L. 1910, ch. 504 and L. 1912, ch. 226, §§ 6-14.*)

§ 28. **Contract for maintenance and operation.** If in the opinion of the board of estimate and apportionment, or other analogous local authority of such city, a contract for the equipment, maintenance and operation as provided for in the preceding section shall be inexpedient, impracticable or prejudicial to the public interest, the public service commission may, with the approval of the board of estimate and apportionment, or such other analogous authority, equip the said road or roads in whole or in part, or purchase power

28 for operation thereof, for and at the public expense, by contract or contracts therefor subject to the provisions of section thirty-six of this act, and enter into a contract with any person, firm or corporation, who or which in the opinion of said commission shall be best qualified to fulfill and carry out said contract, for the maintenance and operation of such road or roads for a term of years to be specified in said contract, and not to exceed ten years. The provisions of the foregoing sections in respect of a contract or contracts for the equipment, maintenance and operation of such road or roads shall apply to such contract for maintenance and operation so far as such provisions are pertinent and applicable thereto except that the renewal or renewals of said contract provided for therein shall not exceed in the aggregate ten years. (*Former section 34b, added by L. 1906, ch. 472, § 6, as amended by L. 1909, ch. 498, § 11 and L. 1910, ch. 205, § 3.*)

§ 29. Terms of contract for construction or operation.

1. Every contract for the construction or operation of such road or roads shall provide by proper stipulations and covenants on the part of the said city, that the said city shall secure and assure to the contractor, so long as the contractor shall perform the stipulations of the contract, the right to construct or to operate the road as prescribed in the contract, free of all right, claim or other interference, whether by injunction, suit for damages or otherwise, on the part of the owner, abutting owner, or other person. The person, firm or corporation bidding or contracting for the construction, equipment, maintenance or operation of the railroad or railroads included in any such contract shall make such deposit of cash or securities and shall give a bond to said city, in such amount as said public service commission shall require, and with sureties to be approved by said commission, who shall justify each in double the amount of his liability upon said bond. Said bond shall be a continuing security, and shall provide for the prompt payment by said contracting person, firm or corporation, of the amount of annual rental, if any, specified in the aforesaid contract,

and also for the faithful performance by said contracting person, firm or corporation of all the conditions, covenants and requirements specified and provided for in said contract. In lieu of said continuing bond such contracting person, firm or corporation may, upon the approval of the said commission, deposit with the comptroller or other chief financial officer of such city cash equal in amount to the entire amount of the said bond or securities which are lawful for the investment of the funds of savings banks within this state and are worth not less than the entire amount of such bond. If such bond shall have been given then after the deposit of cash and securities in lieu thereof as aforesaid, and the approval thereof by the commission, the said bond shall be surrendered by the said city to the said contracting person, firm or corporation duly canceled by the comptroller or other chief financial officer of the said city. In the event of the deposit of cash or securities as aforesaid, the contract may provide for the payment to the contractor of the income of such securities or of interest upon such moneys at a rate not higher than the highest rate received by the city upon the deposit of its funds with banks, and may also provide for withdrawal of securities so deposited upon deposit of cash or securities of the same value, provided that all such securities shall be such as are so lawful for the investment of the funds of savings banks. The commission may in or by any such contract and in its discretion require, and this act, as the same was prior to the present amendment thereof, shall be deemed to have authorized the board of rapid transit railroad commissioners to have heretofore required any other security upon any such contract.

2. No contract entered into under authority of this act shall be assigned without the written consent of the commission. The said contracting person, firm or corporation, with such written consent and upon such terms and conditions as the commission shall prescribe, may either assign the whole of such contract or separately the right or obligation to maintain and operate the said road or roads

29-2 for the remainder of the term of years specified in such contract and all rights with respect to such maintenance and operation, or included in the leasing provisions of such contract, but subject to all the terms and conditions therein stated; provided, however, that the assignee or assignees shall, in and by such assignment, assume all of the obligations of the original contractor under or with respect to such leasing provisions and all obligations which relate in any way to such operation and maintenance; and provided, further, that the commission before giving its consent shall be satisfied that the pecuniary responsibility of the assignee or assignees shall be no less than that of such original contractor; and provided, further, that all of the security or securities which the city shall have received for the performance by the original contractor of such leasing provisions and of all provisions of the contract with respect to such operation and maintenance shall continue in full force as provided in such contract or any modification thereof, as security for the performance by such assignee of all obligations of the contractor under or with respect to such leasing provisions and such maintenance or operation.

3. It shall be deemed to be part of every such contract that, in case the public service commission shall cease to exist, the legislature may provide what public officer or officers of the city shall exercise the powers and duties belonging to the commission under or by virtue of any such contract, and that in default of such provision, such powers and duties shall be deemed to be vested in the mayor of the city. Every such contract shall contain appropriate terms, conditions and provisions for safeguarding the interests of the city in the event of the failure or neglect of such contracting person, firm or corporation to construct, equip, maintain or operate the railroad according to the terms of the contract, and the public service commission may bring such action or actions in the name and in behalf of the city as may be necessary for the sufficient and just protection of the rights of the city; or may, upon such terms as to the

public service commission seem just, and with such person or corporation as to the commission may seem proper, make another operating contract and lease of the said road for the residue of the term of the contractor in default; and may bring action in the name and on behalf of the city to recover from the contractor the amount due from the contractor, less the amount which shall have been received by the city, under or by virtue of such new contract, and for all other damages sustained by the city by reason of such default. (*Former section 34c, added by L. 1906, ch. 472, § 6, as amended by L. 1909, ch. 498, § 12 and L. 1912, ch. 226, § 15.*)

§ 30. Plans for maintenance and operation of road by public service commission.

1. If in the opinion of the board of estimate and apportionment, or other analogous local authority of such city, either a contract for equipment, maintenance and operation, or a contract for maintenance and operation as provided for in the preceding sections would be inexpedient, impracticable or prejudicial to the public interest, the public service commission shall forthwith devise and prepare a plan for the maintenance and operation of such road or roads, either by the commission or under a contract or contracts for the use of the tracks of said railroad or railroads for operation of cars thereon during a term of not more than five years for the carrying of passengers and property by one or more corporations approved by the commission owning or operating any railroad or railroads in said city, or organized for the purpose of operating cars as aforesaid over or upon said rapid transit railroad or railroads, and when said plan shall have been approved by the board of estimate and apportionment, or other analogous local authority of such city, the said commission shall either maintain and operate such road or roads for and on behalf of said city, or allow the use of the tracks of such railroad or railroads for the operation of cars for the transportation of persons or property by any such corporation or corporations. The compensation to be made or the rates of fare

30-1 provided for in any operating contract or plan aforesaid shall be fixed by the commission with the approval of said board and shall be adjusted, fixed and readjusted always with a view to securing as nearly as may be sufficient receipts therefrom, when added to the net revenues from such galleries, ways, subways or tunnels, and all other sources incidental or appurtenant to the use and operation of said road or roads, to provide for operating expenses, maintenance, interest on the cost, all other proper charges, and a sinking fund to discharge the bonds issued for the construction and equipment of such road or roads within a reasonable period, without recourse to taxation. Whenever it shall seem practicable to reduce rates of fare, the reduction shall in the first instance be in favor of school children, and then, next in order, in favor of all the public between six and nine o'clock ante meridian, and between four and seven o'clock post meridian, and then for all the public from five o'clock ante meridian until seven o'clock post meridian, and, lastly, for all the public at all times.

2. No part of any road or roads or of its or their appurtenances, constructed under the authority of this act, shall be used for advertising purposes, except that the person, firm or corporation operating such road or roads may use the structure for posting necessary information for the public relative to the running of trains and to the operation of the road or roads. Nor shall any trade, traffic or occupation, other than required for the operation of said road or roads, be permitted thereon or in the stations thereof, except such sale of newspapers and periodicals as may, from time to time, always with the right of revocation, be permitted by the public service commission. (*Former section 34d, added by L. 1906, ch. 472, § 6, as amended by L. 1909, ch. 498, § 13*)

§ 31. **Discretion of the commission.** Nothing contained in this act shall be deemed, or be construed as intending to limit, or as limiting, in any manner, the discretion of the public service commission, provided in the opinion of the board of estimate and apportionment, or other analogous

local authority of such city, it is expedient, practicable and in the public interest to do so, to enter into contracts for construction, equipment, maintenance and operation with the same person, firm or corporation, or for any one or more of said purposes with the same person, firm or corporation, or with different persons, firms or corporations, either in one contract or in separate contracts, and at any time or times. (*Former section 34e, added by L. 1906, ch. 472, § 6, as amended by L. 1909, ch. 498, § 13*)

§ 32. Acquiring rapid transit railways wholly or partly constructed. 1. The public service commission of the first district, successor of the rapid transit railroad commissioners, may, with the approval of the board of estimate and apportionment, or other analogous local authority of such city, purchase for such price and upon such terms and conditions as may be agreed upon, and acquire by conveyance or grant to such city, to be delivered to said board, any line or lines of railway already constructed or in process of construction of the character which might be constructed as a rapid transit railway or railways under the provisions of this act, and which in the opinion of the board it is for the interest of the public and the city to acquire for rapid transit purposes. The moneys necessary to be paid for any such railway or railways so purchased, together with all expenses necessarily incurred in connection therewith, shall be raised and paid out of the proceeds of bonds issued and sold as provided in section thirty-seven of this act. Any such railway or railways so acquired shall be deemed to have been constructed for and at the expense of the city within the meaning of this act and the cost of acquiring the same shall be deemed and considered as the cost of such construction, in like manner as though said railway had been constructed pursuant to the provisions of this act.

2. Unless all the consents to the construction and operation of any such railway or railways so purchased required by article three, section eighteen, of the constitution shall have been obtained prior to such purchase, the board shall proceed to secure such consents as required by section five

32 of this act. As soon as such consents shall have been obtained, the said board for and on behalf of said city may, with the approval of the board of estimate and apportionment or other analogous authority of such city, enter into a contract with any person, firm or corporation for the equipment of any railway purchased as aforesaid at the cost and expense of such contracting person, firm or corporation, and for the maintenance and operation of such railway or railways for a term of years to be specified in said contract not to exceed twenty-five years, with a covenant for one renewal of not to exceed twenty-five years. Every such contract shall contain such terms and conditions as to the rates of fare to be charged and the character of services to be furnished and the rental to be paid or the terms upon which such railway or railways are to be operated, as the said public service commission of the first district, successor of the board of rapid transit railroad commissioners, shall deem to be best suited to the public interests and as the said board of estimate and apportionment or other analogous body shall approve. (*Former section 34f, added by L. 1908, ch. 472, § 1, as amended by L. 1909, ch. 498, § 14*)

§ 33. Extensions and additional lines. 1. Whenever the said public service commission shall determine that the public interests so require, it may with the approval of the board of estimate and apportionment or other analogous local authorities of such city, without advertising for proposals, but only after a public hearing under section thirty-seven of this act, enter into a contract or contracts with the person, firm or corporation owning, operating or agreeing to operate, any existing rapid transit railroad or railroads for the construction, equipment, maintenance and operation, or for the equipment, maintenance and operation of any additional or proposed rapid transit railroad or railroads to be owned by the city for which necessary consents as provided in section five of this act shall have been obtained, provided that such proposed railroad or railroads shall be operated in conjunction with said existing railroad or railroads for a

single fare. Such contract for the equipment, maintenance and operation of such road or roads or any portion or portions thereof may be made and entered into before consents shall have been obtained therefor as provided in section five of this act, provided, however, that in such case such contract for equipment, maintenance and operation of such road or roads or any portion or portions thereof shall be upon condition that such contract shall not become operative or go into effect as to such road or roads or such portion or portions thereof unless and until the city shall acquire the right to construct such road or roads or portion or portions thereof by obtaining such consents.

Such contract or contracts for construction, equipment, maintenance and operation or for equipment, maintenance and operation may be made in either of the two following ways:

(a) If such existing railroad be wholly or in part within the limits of the city, such contract may be made under and pursuant to the provisions of sections twenty-six, twenty-seven and twenty-nine, so far as the same shall be applicable, with the railroad corporation owning or actually operating or agreeing to operate such existing railroad, but the term for equipment, maintenance and operation of such proposed road, as specified in said contract, pursuant to said sections, shall not be for a period longer than the unexpired term of the franchise or contract for the maintenance and operation of such existing railroad and any renewals provided for in such franchise or contract.

(b) If such existing railroad be a rapid transit railroad constructed wholly or in part at the public expense under the provisions of this act and wholly or in part in operation such contract may be made with the person or corporation having the contract for the construction and operation of said existing rapid transit railroad by the terms of which the said proposed rapid transit railroad if not constructed or to be constructed by the commission under separate construction contracts shall be constructed as extra work under the terms of the said existing contract either without ex-

33-1 pence to the city or for such sum of money or such proportion of the actual cost thereof as may be agreed upon to be paid by such city for or toward the construction thereof, the said railroad when so completed as extra work to be subject to the terms and conditions of the said original contract except so far as shall be otherwise specified and agreed.

2. Every such contract for such construction, equipment, maintenance and operation or for such equipment, maintenance and operation of such proposed railroad made in either of the foregoing specified ways, shall also make provision that the city may, upon giving a specified notice, terminate the contract for equipment, maintenance and operation of any such proposed railroad as to all and if deemed advisable as to any specified portion or portions thereof at any time after the expiration of ten *years from the date when operation of any part of such proposed railroad or of such specified portion thereof shall actually begin, but such right of termination of any such contract shall be upon condition as follows:

(1) If the title to the equipment of said proposed railroad or railroads shall not be vested in the city then that the equipment of the said proposed railroad or portion thereof suitable to and used for the purposes of such railroad as apportioned pursuant to the contract, shall be purchased and taken by the city at an amount which shall be ascertained as provided in the contract, but which shall not be greater than the actual cost of the same, plus fifteen per centum thereof, and such equipment shall, upon such termination of said contract become and be the property of the city on paying to the contractor said amount; or in case the title to the equipment of said proposed railroad shall be vested in the city then that the city shall pay to the contractor an amount for his investment in the equipment of said proposed railroad, or portion thereof, which shall not exceed the actual cost to the contractor of equipment of said

* So in original

railroad or portion, plus fifteen per centum thereof, and shall decrease under provisions of the contract as the term thereof continues so that at the end of the full term of the contract no such amount shall be paid except that if additional equipment shall be required and supplied after the railroad, or portion thereof, shall have been put in operation, and if the contract shall provide that title to such additional equipment shall vest in the city when supplied, then the city shall pay an amount for the contractor's investment in such additional equipment which amount shall not exceed the actual cost to the contractor of such additional equipment plus fifteen per centum thereof and shall diminish so that at the end of the full term of the contract the city shall be required to pay for such investment in additional equipment only such amount as shall be provided in such contract.

(2) Upon the further condition if such proposed railroad shall be constructed wholly or in part at the cost of the contractor that the city shall also pay to the contractor an amount for his investment in the construction of said proposed road or portion thereof, which shall not exceed the actual cost to the contractor of constructing said road or portion, plus fifteen per centum thereof, and shall decrease under provisions of the contract as the term thereof continues so that at the end of the full term of the contract no such amount shall be paid, except that if betterments, additions or improvements shall be required by the commission or approved by the commission prior to the construction thereof and be constructed wholly or in part at the cost of the contractor, then that the city shall pay an amount for the contractor's investment in such betterments, additions or improvements which shall not exceed the actual cost to the contractor of constructing such betterments, additions or improvements plus fifteen per centum thereof and which amount shall diminish so that at the end of the full term of the contract the city shall be required to pay for such investment in betterments, additions or improvements only such amount as shall be provided in the contract.

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3. The contract shall provide a method of ascertaining the amount to be paid for said equipment and for the contractor's investment in the construction of said proposed road upon a termination by the city of such contract and for the equipment of said proposed railroad at the end of the full term of the contract, and may provide for determining from time to time, in default of agreement, by arbitration or by the court, a valuation of the contractor's said investment in the construction of said proposed road and of the equipment or any part or portion of either thereof for any purpose under said contract. The contract may provide that the title to the equipment as well as to said road shall vest in the city from the beginning and that the amount to be paid by the city for the contractor's investment in such equipment shall decrease as the term of the contract continues so that at the end of the full term of the contract no amount shall be payable therefor except for additional equipment as aforesaid. The contract shall provide that upon the expiration of the term fixed in the contract, the contract shall end without compensation to the contractor except as provided in the contract, for betterments, additions or improvements to any such railroads required to be made or approved by the commission prior to the construction thereof during the term of any such contract, and, if the title to the equipment be not vested in the city, for equipment suitable to and used for the purposes of said contract to the amount, if any, ascertained as provided in the contract, and that in such event such equipment shall become the property of the city upon payment to the contractor of the said amount, or, if the title to the equipment be vested in the city, then an amount for the contractor's investment in additional equipment for any such railroads to be ascertained as provided in the contract.

4. The contract may also include a provision for modification of the lease or contract for equipment, maintenance and operation of said existing rapid transit railroad so that such last named lease or contract may be terminated by the city upon giving a specified notice at the same time and

in connection with the termination of the contract as to such proposed railroad, but such right of termination of any such contract as to said existing rapid transit railroad shall be upon condition (1) that the equipment of the said railroad suitable to and used for the purposes of such contract shall be purchased and taken by the city at an amount which shall be ascertained as provided in the contract, but shall not be greater than the actual cost of the same plus fifteen per centum thereof, and such equipment shall, upon such termination of such contract, become and be the property of the city on paying to the contractor such amount, and (2) upon the further condition, if said existing railroad shall have been constructed wholly or in part at the cost of the contractor, that the city shall also pay to the contractor or to his assignee in possession an amount for the investment in the construction of said existing road which shall not exceed the actual cost to the contractor of constructing such road, plus fifteen per centum thereof, and shall decrease under the provisions of the contract as the term thereof continues, so that at the end of the full term of the contract, and of any renewal thereof contained therein, no such amount shall be paid. The contract as so modified shall provide a method of ascertaining the amount to be paid for said equipment and for the contractor's investment in the construction of said road upon a termination by the city of said contract, and for the equipment of said existing railroad at the end of the full term of the contract; and may provide for determining from time to time, in default of agreement, by arbitration or by the court, a valuation of the contractor's said investment in the construction of said road and of the equipment, or any part or portion of either thereof, for any purpose under said contract. The contract may also provide for assuring that in case a new contract for equipment, and for maintenance and operation of said existing rapid transit railroad, or proposed rapid transit railroad, is made after such termination, pursuant to notice, or after the expiration of the full term of such con-

33-4

33-4 tract, that the title to and possession of the equipment so taken and the right to the possession of the railroad or railroads so constructed may be transferred directly to the new contractor upon his paying the amount so required. (*New section added by L. 1909, ch. 498, § 15 and L. 1912, ch. 226, § 16*)

§ 34. 1. Every grant or contract made under the provisions of this article, as part of which the city shall have a right to terminate any right or franchise or any contract for maintenance and operation of any railroad or railroads, shall provide that if at any time in ascertaining the amount to be paid by the city as a condition of such termination or at the expiration of the full term, it shall be necessary that a valuation of any plant, property, equipment, construction or any investment in any thereof, shall be determined, such valuation shall in default of agreement, be determined by arbitration or by the court. Every such grant or contract shall also make provision to assure supervision by the commission of all operations of said grantee or contractor in and about such enterprise and for keeping and for access to and examination, use and production of any and all books, records and memoranda of such operations not only of the grantee or contractor but of any contractor, subcontractor, banker or person furnishing money, material or supplies directly or indirectly to such enterprise, to the extent that such books, records and memoranda have to do therewith, and for ascertaining the cost to the grantee or contractor and the value of any equipment, property or construction furnished or done pursuant to said grant or contract, including permanent additions to construction from time to time and for a method of determining the amount of such cost forthwith upon the furnishing or completion of the same by arbitration or by the court in default of an agreement upon the amount thereof, and the grant or contract may provide that if the amounts to be paid to the grantee or contractor upon any such termination shall not have been finally determined or paid prior to or at the time when the termination is under the said notice given to take

effect the title to and right of possession of the property, and the right of possession of the said railroad may nevertheless pass to the city or to a new contractor, and that the city or such new contractor having given proper and sufficient sureties shall pay to the contractor the amount so determined, with interest from the time aforesaid.

2. Every grant or contract made under the provision of this article by the terms of which the city in lieu of rental shall be entitled to a portion of income or increase derived from the enterprise shall make provisions for definition and determination from time to time of the items to be included in operating expenses, taxes, payments to reserve and amortization funds and for the percentages or amounts to be set aside therefor and for interest upon construction cost. The commission shall prescribe in the grant or contract a period for amortization by the grantee or contractor of the actual cost of plant and property other than equipment, or actual cost to the contractor of the construction of such road, and the period so prescribed shall end with the term of the grant. Any and all sums of moneys hereafter received by the city from or under any grant or contract heretofore or hereafter made under the provisions of this act, over and above such sum or sums as are required by law to be paid into a sinking fund to meet the payment of interest or principal on city bonds issued for construction and equipment of any railroad pursuant to any contract, and except any sum or sums of money that may be contributed toward the construction of any road or roads by the contractor having the contract for the equipment and operation of such road or roads, shall be kept separate and apart from any and all other moneys of such city and paid into a fund to be known as the rapid transit fund, and shall be applied under the direction of the board of estimate and apportionment or other analogous local authority of such city only to or toward the construction of railroads, or the purchase of plant and property or equipment of railroads, pursuant to the provisions of this act, or to deficiencies in the operation or rental of railroads owned by the city, or in

34-2 the operation of railroads owned and operated by the city pursuant to this act.

3. Unless otherwise provided by law the commission with the approval of the board of estimate and apportionment, or other analogous local authority of such city, shall have and exercise the powers, rights and privileges reserved or given to the city to terminate any right, privilege, franchise, authority or contract granted or entered into, or which may be exercised under the provisions of this act, and may do and perform any and all things requisite and necessary to any such termination. (*New section added by L. 1909, ch. 498, § 15, as amended by L. 1912, ch. 226, § 17*)

§ 35. **Equipment.** The equipment to be supplied by the person, firm or corporation contracting for the equipment or any part thereof, of any such road shall include all such rolling stock, motors, boilers, engines, wires, ways, conduits and mechanisms, machinery, tools, implements and devices of every nature whatsoever used for the generation or transmission of motive power and including all power houses, and all apparatus and all devices for signaling and ventilation as may be required for the operation of such road and specified in the contract for such equipment.* (*Added by L. 1894, ch. 752, § 9, as amended by L. 1896, ch. 729, § 4; L. 1900, ch. 616, § 2; L. 1905, ch. 599, § 2; L. 1906, ch. 472, § 7 and L. 1909, ch. 498, § 16*)

§ 36. **Advertising for proposals.** The said public service commission before awarding any contract or contracts shall advertise for proposals for such contracts by a notice to be printed once a week for two successive weeks in no less

* Prior to the amendment of 1905 (which took effect May 24, 1905), this section contained the following clause: "Such person, firm or corporation shall be exempt from taxation in respect to his, their or its interest under said contract and in respect to the rolling stock and all other equipment of said road, but this exemption shall not extend to any real property which may be owned or employed by said person, firm or corporation in connection with said road." The amending act (Laws 1905, ch. 599, § 3), limited the effect of the repeal of the foregoing clause by the following provision: "nothing in this act contained shall be held to repeal, modify or alter any provision of the act hereby amended with respect to any railroad or railroads constructed, constructing or contracted for thereunder when this act takes effect; but the act hereby amended shall be and continue in full force and effect in respect of such railway or railways so constructed, constructing or contracted for as if this act had not been passed."

than two of the daily newspapers published in said city, and in such newspapers published elsewhere than in said city as said commission shall determine. Such notice shall set forth and state the points within said city, between which said road or roads is or are to run, the general method of construction, the route or routes to be followed, the term of years for which it is proposed to make such contract, and such other details and specifications as said commission shall deem to be proper. Said notice shall state the time and place at which said proposals will be opened, and the said commission shall attend at the time and place so specified, and shall publicly open all proposals that shall have been received, but the said commission shall not be bound to accept any proposals so received, but may reject all such proposals and readvertise for proposals in the manner hereinbefore provided, or may accept any of such proposals as will, in the judgment of such commission, best promote the public interest, and award a contract accordingly. All such contracts must before execution be approved as to form by the corporation counsel, or other chief legal adviser of such city. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1895, ch. 519, § 11 and L. 1909, ch. 498, § 16*)

§ 37. Issue of bonds by city. 1. For the purpose of providing the necessary means for such construction, or equipment, or both, as the case may be, or acquiring by purchase, at the public expense, of any such road or roads, or of galleries, ways, subways and tunnels for subsurface structures, and the necessary means to pay for lands, property, rights, terms, privileges and easements, whether of owners, abutting owners or others, which shall be acquired by the city for the purposes of the construction or the operation of such road or roads as hereinafter provided, and of meeting the interest on the bonds in this section hereinafter provided for accruing thereon prior to the completion and readiness for operation of the portion of such road or roads, and the said galleries, ways, subways and tunnels for subsurface structures, for the purchase, construction, or equipment of which such bonds shall have been respectively issued, the

37-1 board of estimate and apportionment, or other local authority in said city, in which such road or roads are to be constructed, having power to make appropriations of moneys to be raised by taxation therein, from time to time, and as the same shall be necessary, and upon the requisition of said public service commission, shall direct the comptroller or other chief financial officer of said city, and it shall thereupon become his duty, to issue the bonds of said city at such a rate of interest as the board of commissioners of the sinking fund of said city, if there be such a board, or if there be no such board, then as other local authority directing the issue of such bonds, may prescribe. Said bonds shall provide for the payment of the principal and interest in gold coin of the United States of America. They shall not be sold for less than the par value thereof, and the proceeds of the same shall be paid out and expended for the purposes for which the same are issued, upon vouchers certified by said public service commission. Said bonds shall be free from all taxation for city and county purposes, and shall be payable at maturity out of a sinking fund to be established and created out of the annual rentals or revenues of said road, including galleries, ways, subways, or tunnels for subsurface structures, as hereinbefore provided. But this provision that the said bonds shall be payable out of such sinking fund shall not diminish or affect the obligation of said city as a debtor upon said bonds, or any other right or remedy of any holder or owner of any such bonds, to collect the principal or interest thereof.

2. The amount of bonds authorized to be issued and sold by this section shall not exceed the limit of amount which shall be prescribed by the board of estimate and apportionment or such other local authority having power to make appropriations of moneys to be raised by taxation; and no contract for the construction of such road or roads shall be made unless and until such board of estimate and apportionment or such other local authority shall have consented thereto and prescribed a limit to the amount of bonds available for the purposes of this section which shall

be sufficient to meet the requirements of such contract in addition to all obligations theretofore incurred and to be satisfied from such bonds. Before finally fixing the terms and conditions of any contract for any of the purposes contained and set forth in this act, the public service commission shall set a date or dates for a public hearing upon the proposed terms and conditions thereof, at which citizens shall be entitled to appear and be heard. No such hearing shall be held, however, until notice thereof shall have been published for *a least two weeks immediately prior thereto in the City Record, or other official publication of the city, and at least twice in two daily newspapers published in the city. It shall be the duty of the commission to cause as many copies of a draft of the proposed contract to be printed at least two weeks in advance of such hearing as may be necessary. The said notice of such public hearing shall state where copies of such drafts may be obtained upon payment of a fee, to be fixed by said commission, but not to exceed one dollar for each such copy. The commission may, after the hearing to be held as above required, alter, modify or amend such draft contract in any manner in its discretion.

3. The words "rapid transit railroad," "railroad," or "improvement" as hereinafter in this section used shall severally include a rapid transit railroad, and any part thereof, and any improvement or addition thereto, that shall be the subject of action hereunder, and shall severally include any and all property, including equipment other than rolling stock, that shall be necessary either for the construction or the operation of such a rapid transit railroad. A rapid transit railroad owned or to be owned by the city, and for the construction of which with public money in whole or in part a contract or contracts have been or are authorized by this act to be entered into as aforesaid, shall be a local improvement the cost of which may be met in whole or in part by assessment on the property benefited. The public service commission with the approval of the

* So in original.

37-3 board of estimate and apportionment or other analogous local authority of the city in which such rapid transit railroad is to be constructed shall have power to determine whether all or any, and if any what portion of the cost and expense necessary to be incurred for any such road shall be assessed upon property benefited thereby, and an assessment or assessments upon the property so benefited may be laid, confirmed, enforced and collected in accordance with such determination and pursuant to the provisions of the charter and laws respecting assessments for local improvements in such city.

4. At any time after the consents have been obtained for any such rapid transit railroad and the detailed plans and specifications therefor have been prepared as hereinbefore authorized and directed, the public service commission may certify and transmit to said board of estimate and apportionment or such other analogous local authority of such city an estimate of the cost and expense necessary to be incurred for the construction of said railroad, together with a statement which shall show (1) the proportion of said cost and expense, together with the amount thereof in money, which should be assessed upon the property benefited; (2) the boundaries of the district or districts in said city upon which an assessment or assessments aggregating said amount should in the opinion of the commission be levied, and (3) the amount so to be levied in every such district. Thereupon the public service commission with the approval of the board of estimate and apportionment or other such analogous local authority of said city shall have power to, and, if in their judgment the interests of the public so require they shall after publishing a notice at least one week in advance in the City Record and in such other newspapers published in said city as said board of estimate and apportionment, or other local authority, shall designate as sufficient, stating the time, place and subjects to be considered, and after a joint hearing, pursuant to such notice by and before said commission and said board or other authority, which may be adjourned from time to time, in

accordance with the charter and laws aforesaid, fix and determine the boundaries of the district or districts upon which said assessment or assessments shall be levied, the whole amount or proportion of any such cost and expenses to be assessed upon property benefited by said improvement, and the amount or proportion of such whole assessment to be levied in said district or districts respectively benefited by said improvement, and take such other and further proceedings as shall be necessary to levy and collect such assessment or assessments. The decision of said public service commission aforesaid, so approved by the board of estimate and apportionment or other such analogous local authority, shall be final as to each matter so fixed and determined and shall not be subject to review.

5. The board of estimate and apportionment or such other analogous local authority shall certify to the board of assessors or other analogous authority of such city the amount or amounts of such cost and expense so directed to be assessed upon property benefited in each such district, and the said board shall thereupon proceed forthwith to levy and assess such amount or amounts upon the real property within the district or districts benefited thereby in proportion to the amount of such benefit and shall not be limited in the levying of said assessment or assessments to one-half of the fair value of any house or lot or improved or unimproved land. Such assessment when laid shall be subject to, and protected by, all provisions of the charter of such city applicable to assessments for local improvements levied pursuant to such charter.

6. An assessment levied against any property in accordance with this section shall be payable as follows, namely: one-tenth thereof within sixty days from the date of the confirmation and entry of each assessment and the remainder of such assessment in nine installments as nearly equal in amount as may be with interest thereon from the date of entry and confirmation at the rate of six per centum per annum in one, two, three, four, five, six, seven, eight and nine years respectively thereafter, but all installments not

37-6 due may be paid at any time with interest to the date of payment; provided, however, that if any installment and interest thereon be not paid within three years after it shall become due and payable as aforesaid the entire assessment less such part thereof as shall have been already paid, shall become due and payable and must be immediately collected, or the tax lien therefor sold or enforced in the same manner as other delinquent assessments are required to be collected by the charter and laws of said city.

7. In order to provide funds in advance of the collection of such assessments, the comptroller or other chief financial officer of such city shall in addition to power to issue assessment bonds under the provisions of any law or charter of such city have also additional authority in lieu of issuing any such assessment bonds under said law or charter to issue and sell at not less than par on or after the date when any such assessment shall be confirmed and entered bonds which shall be known as rapid transit construction bonds for the railroad designated as aforesaid and which shall not exceed in the aggregate the amount of the assessment so levied as aforesaid. Except that the city may guarantee in such bonds the validity of the assessment and the regularity of the proceedings to levy it, such rapid transit construction bonds shall not be issued or sold upon the faith or credit of the city and the faith or credit of the city shall not be pledged nor shall the city or any of the city's property be liable for the payment thereof, but such bonds shall be payable only out of the rapid transit construction fund as hereinafter directed to be constituted. Such bonds shall be in such form, denomination or denominations, and for such term, not exceeding fifteen years, as the said comptroller or other financial officer shall designate and shall bear the same rate of interest as the assessment installments shall bear. They shall be exempt from all taxation, except for state purposes, shall be receivable in payment of any such assessments or installments thereof, and may be made redeemable, in whole or in part, on any interest day after one year. They shall be a legal investment for

the sinking funds of such city and for trustees and other fiduciaries charged with the investment of trust funds. If such bonds are redeemed in part, the bonds selected for redemption shall be chosen by lot, and their numbers shall be published in at least two newspapers of general circulation in such city at least twice a week for four weeks prior to the day of their redemption, and after the day specified for their redemption, the principal sums represented thereby shall bear no interest.

In selling such rapid transit construction bonds the comptroller may by the terms of sale or otherwise prescribe that payment to him therefor shall be made by the purchaser in such installments as the need of construction as certified to him by the public service commission shall require, and may provide for the forfeiture of the right to bonds allotted and of payments made thereon. All moneys derived from the sale of such bonds, and all moneys derived from the collection of such assessments together with all net revenues received by such city from the operation of such rapid transit railroad so constructed as aforesaid shall be kept separate and apart from all other funds of the said city and shall be known as the rapid transit construction fund of such railroad. They shall be applied only to the following uses and, among such uses, only in the following order: (1) To the cost and expenses of the construction of such railroad; (2) to the acquisition of property necessary therefor, including equipment other than rolling stock; (3) to the retirement of the rapid transit construction bonds therefor.

8. In case of default in the payment of any installment of interest or principal of any rapid transit construction bond the holder thereof may require, if necessary, by peremptory writ of mandamus, any tax lien of such city for the amount of any assessment upon the property benefited which is then due and payable, to be immediately sold or enforced in accordance with the charter and laws of such city. If at such time the tax lien so sold shall include, in addition to the lien of the assessment aforesaid, any lien for delinquent

37-8 taxes or other lienable charges due to the city, and if it shall become necessary to reduce the amount of the tax lien pursuant to the charter and laws of such city, the lien shall not be reduced so as to make it less in value than the amount of the assessment aforesaid with the interest thereon, and notwithstanding any reduction as aforesaid, the proceeds of the sale of such a lien, to the extent of the full amount of the assessment and interest, shall be paid into the rapid transit construction fund of the rapid transit railroad aforesaid, and the balance, if any, shall be applied as proceeds of the rest of the tax lien.

If any assessment shall be reduced for fraud, substantial error or other reason, the cost and expense of construction may be reassessed, and the reassessment shall stand as security for the rapid transit construction bonds aforesaid to the same degree and in the same manner as if it had been an original assessment. In case any assessment is reduced below its original amount, however, either the amount to be expended in constructing the rapid transit improvement aforesaid shall be correspondingly reduced or else the difference between the original assessment and the reassessment shall be paid by the city into the rapid transit construction fund of the rapid transit railroad aforesaid, either from current revenue or from the proceeds of the sale of revenue bonds, corporate stock, or other obligations of such city as the board of estimate and apportionment shall determine.

9. If the cost and expenses of construction of any such railroad shall be only partially assessed as aforesaid upon the property benefited, no provisions in any contract for the construction thereof shall become operative until the board of estimate and apportionment or other analogous local authority shall have consented thereto and shall have prescribed a limit to the amount of city bonds, if any, available for the purpose of said contract as hereinbefore provided, and no provisions in any contract for the construction of any railroad wholly or partly by means of local as-

sessments shall become operative until the board of estimate and apportionment or other analogous local authority shall have levied an assessment for the construction thereof, or until rapid transit construction bonds issued by the comptroller under the provisions of this section in advance of the collection of such assessment shall have been sold in sufficient amounts when paid for to cover the cost and expense payable from assessments levied as aforesaid. In so far as any such railroad shall be construed by means of local assessments as aforesaid, the contract for construction shall provide that any sums of money payable thereunder for or on account of such construction shall be payable only from the rapid transit construction fund of such road, and in so far as any such road shall be constructed by means of moneys appropriated by the city the contract for construction shall provide that any sums of money payable thereunder for or on account of such construction shall be payable only from the proceeds of said appropriation. In either event, the contract for construction shall provide that the city shall not be liable to any contractor for any sum or sums payable thereunder, except to the extent of moneys paid or to be paid into such rapid transit construction fund or derived or to be derived from said appropriation.

10. In a case where the moneys collected pursuant to an assessment levied as hereinbefore provided shall be insufficient to discharge the rapid transit construction bonds so issued as aforesaid, or if the amount arising on the sale of such bonds is sufficient to pay the obligations incurred, for the construction of such railroad, the deficiency up to an amount not in excess of ten per centum of the total amount of the assessment shall be paid by such city into the rapid transit construction fund, either from current revenue or from the proceeds of the sale of revenue bonds, corporate stock or other obligations of such city to be authorized and sold as provided in this act, as the board of estimate and apportionment or other such analogous local authority shall

37-10 determine. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1895, ch. 519, § 12; L. 1904, ch. 562, § 1; L. 1906, ch. 472, § 8; L. 1906, ch. 607; L. 1907, ch. 534, § 1; L. 1908, ch. 472, § 2; L. 1909, ch. 498, § 17 and L. 1911, ch. 888*)

§ 38. **Modification of contracts.** The public service commission for and on behalf of the said city in which such road or roads may be constructed, may, from time to time with the consent, in writing, of the bondsmen or sureties of the person, firm or corporation which has contracted with said commission or its predecessors to construct, equip, maintain or operate any road or roads, agree with the said contracting person, firm or corporation upon changes in and modifications of said contract, or of the plans and specification upon which said road or roads is or are to be constructed, but no change or modifications in the plans and specifications consented to and authorized pursuant to section five of this act shall be made without the further consent and authorization provided for in said section. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1895, ch. 519, § 13; L. 1906, ch. 472, § 9; L. 1909, ch. 498, § 18 and L. 1912, ch. 226, § 18*)

§ 38-a. [Repealed. Laws of 1909, chapter 498, § 2]

§ 39. **Acquisition of property.** 1. For the purpose of constructing or operating any road for the construction or operation of which a contract shall have been made by the board of rapid transit railroad commissioners or the public service commission, including necessary stations and station approaches, or for the purpose of operating or securing the operation of the same free of interference and right of interference and of action and right of action for damages and otherwise, whether by abutting owners or others, or to provide, lay or maintain conduits, pipes, ways or other means for the transmission of electricity, steam, water, air or other source or means of power or of signals or of messages necessary or convenient for or in the construction or operation of such road, or for the transportation of materials necessary for such construction or operation, or to provide a temporary or permanent way or course for

any such conduit, pipe or other means or source of transportation, said commission for and in behalf of said city may acquire, by conveyance or grant to said city to be delivered to the said commission and to contain such terms, conditions, provisos and limitations as the said commission shall deem proper, or by condemnation or other legal or other proceedings, as in this act provided, any real estate and any rights, terms and interests therein, any and all rights, privileges, franchises and easements, including such of any thereof as may be already devoted to a public use, whether of owners or abutters, or others to interfere with the construction or operation of such road or to recover damages therefor, which, in the opinion of the commission, it shall be necessary to acquire or extinguish for the purpose of constructing and operating such road free of interference or right of interference.

2. The word "property," hereinafter used, shall be deemed to include any such real estate, and any rights, terms and interest therein, and any such rights, privileges, franchises and easements, whether of owners, abutting owners or others. Where any contractor for the construction or operation of such railroad shall require any property for such construction and operation, such property shall be deemed to be required for a public purpose; and with the approval of the public service commission the same may be acquired by the said contractor in all respects as such property may be acquired by the public service commission for the said city, and all proceedings to acquire the said property shall be conducted under the direction and subject to the approval of the commission. It shall be the duty of the commission whenever any property which the city shall have acquired as provided in this act shall be unnecessary for rapid transit purposes, to sell and convey the same in behalf of said city, provided, however, that no such sale or conveyance shall be made except with the approval of the commissioners of the sinking fund of such city or, if there be no commissioners of the sinking fund, then the

39-2 other board or public body thereof having power to sell or lease city property, and provided further that the proceeds of any such sale or conveyance shall, under the direction of the public service commission, be applied either to the purchase of other property necessary for rapid transit purposes or shall be applied in all respects as the payments of rental to be made by the contractor as provided in this act.

3. Whenever the said rapid transit railroad commissioners or the public service commission for and in behalf of the city shall have acquired or shall hereafter acquire an easement in property by conveyance or grant for the purpose of the operation or construction of a rapid transit railroad, the commission may in behalf of the city and as part consideration for the grant or conveyance of the easement, enter into an agreement with the grantor of such easement or right of way, giving to such grantor or his assigns, the right of lateral or other support through, in, or under the said property, or any adjoining lands or space occupied by said rapid transit railroad for any building erected or to be erected upon the land over which the easement or right of way has been obtained for the support and maintenance of any such building or buildings, provided that any structure that shall be built for the support of any such building or buildings shall be approved by said commission and shall not extend in or under any street beyond the curve lines as fixed by the ordinances of the board of aldermen or other legislative body of such city.

4. The commission may temporarily let or allow the use and occupation of any property acquired as provided in this act, and receive rent therefor between the time of the acquisition thereof and the time when the same shall be required for construction or operation of said road, or shall be sold as aforesaid, and in case of default of any tenant may prosecute any action or proceeding to recover possession of the premises let or used and occupied as aforesaid. All rent received shall be paid to the comptroller or chief

financial officer of such city, and shall be applied in like manner as the proceeds of sales of property acquired hereunder are directed to be applied in the second subdivision of this section.

5. The existence of an easement acquired for and in behalf of a city under this act shall not be deemed an incumbrance, under any law relating to investments in mortgages upon real property by corporations, trustees, executors, administrators, guardians or other persons holding trust funds, but the effect of such an easement upon the real property which it affects shall be taken into consideration in determining the value thereof. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1895, ch. 519, § 15; L. 1896, ch. 729, § 5; L. 1901, ch. 587; L. 1904, ch. 564, § 5; L. 1906, ch. 472, § 10; L. 1909, ch. 498, § 19; L. 1910, ch. 205, § 4 and L. 1912, ch. 226, § 19*)

§ 40. **Right of commission to enter upon property for purpose of survey; maps and plans to be filed.** It shall and may be lawful for said commission, and for all persons acting under its authority, to enter in the day time into and upon any and all lands and property which it shall deem necessary to be acquired, or to which there may be appurtenant rights, terms, franchises, easements or privileges which it shall deem necessary to be acquired or extinguished by said city, for the purpose of making the maps or surveys hereinafter mentioned, and also to enter in like manner and for the same purpose upon any property adjacent to and within five hundred feet of the property to be so surveyed; and the commission shall cause three similar maps or plans to be made of each parcel of property which it may deem necessary so to be acquired, or to which there may be appurtenant rights, terms, franchises, easements or privileges necessary so to be acquired or extinguished, designating each of said parcels by a number, and upon each map or plan so made or in a memorandum accompanying the same and to be deemed part thereof the commission shall cause to be clearly indicated the particular estate or

40 estates, rights, terms, privileges, franchises or easements to be acquired or extinguished for the purposes of this act, in relation to each and every piece of parcel of property described upon said map or plan. The commission shall have power to cause a triplicate set of maps or plans and memoranda as herein provided for to be made as often and at such times as said commission shall determine, and each set of maps or plans and memoranda so made shall contain the particulars above enumerated within such district as said commission shall in each case provide. The maps or plans and memoranda herein provided for, when approved and adopted by said commission, shall have written thereon a certificate of such approval, signed by the members of said commission adopting and approving the same, and one copy thereof shall be filed in the department of public works, or other chief executive department having principal charge of the streets, there to remain as a public record, and the other two of said maps or plans and memoranda shall be transmitted to the counsel to the corporation or other principal legal adviser of said city. The commission may from time to time make and file further maps or plans and memoranda amending those already filed, but not so as to defeat or impair any property or interest which shall have been already acquired, or to revive any interest or right which may have been already extinguished by the said city. *(Added by L. 1894, ch. 752, § 9, as amended by L. 1895, ch. 519, § 16 and L. 1909, ch. 498, § 19)*

§ 41. Corporation counsel to acquire property. Whenever and as often as the commission shall deem it to be necessary and proper that the said city should acquire any such property and shall have caused to be made, as provided in the last preceding section, the maps or plans and memoranda specifying and defining the said property to be acquired, or to which are appurtenant the rights, terms, franchises, easements or privileges to be acquired or extinguished, and shall have certified, filed and transmitted the several copies of such maps or plans as in the last section

prescribed, the commission may direct the counsel to the corporation or other principal legal adviser of said city, to take legal proceedings to acquire the same for the said city, and the said counsel to the corporation, or other principal legal adviser, shall thereupon take legal proceedings as in this act provided. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1895, ch. 519, § 17 and L. 1909, ch. 498, § 19*)

§ 42. Disposition of maps. The said counsel to the corporation, or other principal legal adviser of said city, shall cause one of the maps or plans, so as aforesaid transmitted to him, to be filed in the office of the register of the county, or if there be no such register, then in the office of the county clerk of the county in which the property covered by said map is situated. The map, hereinafter denominated the third map, being the other one of the two so as aforesaid transmitted to said counsel to the corporation, or other legal adviser, shall be disposed of as hereinafter provided. (*Added by L. 1894, ch 752, § 9, as amended by L. 1909, ch. 498, § 19*)

§ 43. Petition. After the said set shall have been filed as hereinbefore provided in the office of the register or county clerk of said county, the said counsel to the corporation, or other principal legal adviser, for and on behalf of the said city, shall, and he may from time to time, upon first giving the notice required by the next section of this act, apply to the supreme court at any special term or appellate division thereof, to be held in the judicial district in which said county is situated, for the appointment of commissioners of appraisal. Upon each such application he shall present to the court a petition, signed by a majority of the members of said commission and verified in the manner prescribed by law for the verification of pleadings, according to the practice of said court, setting forth the action or determination theretofore taken or had by said commission, with respect to the property to be acquired, and the filing of said maps or plans and memoranda, and praying for the appointment of such commissioners of ap-

43 appraisal. Such petition shall contain a general description of all the property to, or in or over or appurtenant to which any title, interest, right, franchise, easement, term, or privilege is sought to be acquired, or extinguished, and of every right, franchise, easement or privilege sought to be acquired by the said city for public purposes, each lot or parcel being more particularly described by a reference to the number of said lot or parcel as given on said maps, and the title, interest, right, easement, term or privilege sought to be acquired, or extinguished, to or in or over or appurtenant to each of said lots or parcels shall be stated in said petition. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1895, ch. 519, § 18 and L. 1909, ch. 498, § 19*)

§ 44. Notice of intention to make application. The said counsel to the corporation, or other principal legal adviser, shall give or cause to be given notice by publication in two public newspapers published in the said city, or, instead of such publication, may in his discretion cause service of the petition and notice of his intention to make application to the said court for the appointment of such commissioners of appraisal, to be made in the same manner prescribed by section three thousand three hundred and sixty-two of the code of civil procedure; such notice if published as aforesaid shall state the time and place of such application, shall briefly state the object of the application, and shall briefly describe the property sought to be acquired or affected, and refer to a fuller statement to be filed in the office of the public service commission, in which shall be set forth the location and boundaries of the several lots or parcels of property, and rights, franchises, easements or privileges sought to be taken or affected, and a brief statement as to each of said lots or parcels, of the title, interest, rights, easements, terms or privileges therein or appurtenant thereto sought to be acquired or extinguished, with a reference to the dates and places of filing the said maps or plans and memoranda, shall be a sufficient description of the property sought to be so taken or affected. Such notice in case of publication as aforesaid shall be so published in

said newspapers twice a week for two weeks immediately previous to the time fixed in said notice for the presentation of each petition. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1895, ch. 519, § 19; L. 1902, ch. 533 and L. 1909, ch. 498, § 19*)

§ 45. Order appointing commissioners of appraisal. At the time and place mentioned in said notice, unless the said court shall adjourn said application to a subsequent date, and in that event at the time to which the same may be adjourned, the court, upon due proof to its satisfaction of the publication aforesaid, and upon filing the said petition, shall make an order for the appointment of three disinterested freeholders, residents in said city, as commissioners of appraisal, to ascertain and appraise the compensation to be made to the owners of property so to be taken or extinguished for the purposes indicated in this act. Such order shall fix the time and place for the first meeting of the commissioners. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1909, ch. 498, § 19*)

§ 46. Oath of commissioners. The said commissioners shall take and subscribe the oath required by the twelfth article of the constitution of the state of New York, and shall forthwith file the same in the office of the clerk of the county in which said city is situated. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1909, ch. 498, § 19*)

§ 47. Time when city becomes seized. On filing said oath in the manner provided in the last section, the said city shall be and become seized and possessed in fee or absolute ownership of all those parcels of property, rights, terms, franchises, easements and privileges which are in the maps or plans and memoranda referred to in section forty of this act, described as parcels of property, rights, franchises, easements, or privileges which are to be acquired, and also shall become seized and possessed of all the rights, terms, franchises, easements or privileges appurtenant to any lots or parcels of property indicated on said maps or plans as parcels in regard to which it is deemed necessary to acquire such rights, terms, franchises, easements or privileges, or

47 the said rights, terms, franchises, easements or privileges shall be extinguished as the case may be; and the public service commission for the said city, may immediately or at any time or times thereafter take possession or enter into the enjoyment of the said property, rights, terms, franchises, easements and privileges or of any part or parts thereof without any suit or proceeding at law for that purpose and the commission for the said city, or any person or persons acting under their or its authority, may enter upon and use, occupy, and enjoy in perpetuity all the parcels of property and all the rights, terms, franchises, easements, or privileges appurtenant to any of the parcels of property and all rights, franchises, easements, and privileges, described on said maps or plans or in said memoranda, for any of the purposes authorized and provided for by this act. But on such filing of the said oath the said city shall be and become forthwith liable to the respective owners of the several parcels of property and the several rights, terms, franchises, easements and privileges appertaining thereto, and of the said rights, franchises, easements, and privileges acquired as aforesaid, for the true and respective values thereof, together with interest thereon from the time of filing and said oath, provided, however, that no such interest shall be payable to any owner of any such property, right, term, franchise, easement or privilege during any period during which the said city or the commission may by any resistance whether by legal proceedings or otherwise of such owner or with his authority, be prevented from taking possession thereof or enjoying the same; and provided further, that no action shall be brought to recover the amount of such value or interest unless within eighteen months after the filing of such oath, a report shall not have been duly made by commissioners of appraisal as herein provided, or such report shall not have been confirmed by the supreme court as herein provided, so that the said city shall be liable to forthwith pay the amount by such report ascertained to be due

for such value or interest. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1895, ch. 519, § 20 and L. 1909, ch. 498, § 19*)

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§ 48. **Powers and duties of commissioners of appraisal.** Any one of said commissioners of appraisal may issue subpœnas, and administer oaths to witnesses, and they or any one of them, in the absence of the others, may adjourn the proceedings, from time to time in their discretion, but they shall continue to meet from time to time as may be necessary to hear, consider and determine upon all claims which may be presented to them under any of the provisions of this act. In case of the death, resignation, refusal or neglect to serve of any commissioner of appraisal, the remaining commissioner or commissioners shall, upon ten days' notice to be given by advertisement in the newspapers mentioned in section forty-four of this act, apply to the supreme court, at a special term or appellate division thereof, to be held in the judicial district in which said city is situated, for the appointment of a commissioner or commissioners to fill the vacancy or vacancies so occasioned. In case of the death, resignation or refusal to serve of all the commissioners of appraisal, the said counsel to the corporation or other principal legal adviser to said city shall, on giving the notice required in this section, apply to the said court for the appointment of other commissioners of appraisal. It shall be the duty of the commissioners of appraisal to procure from the counsel to the corporation or other principal legal adviser the third set of maps or plans and memoranda provided for in sections forty and forty-two of this act. They shall view the property laid down on said map, and shall hear the proofs and allegations of any owner, lessee or other person in any way entitled to or interested in the property to be acquired or extinguished, or any part or parcel thereof, and also such proofs and allegations as may be offered on behalf of the said city. They shall reduce the testimony, if any, taken before them to writing, and after the testimony is closed, they, or a majority of them, all having considered the same, and having an opportunity

48 to be present, shall, without unnecessary delay, ascertain and determine the compensation which ought justly to be made by the said city to the owners or persons interested in the property acquired or extinguished by said proceedings. The said commissioners of appraisal shall make reports of their proceedings to the supreme court, as in the next section provided, with the minutes of the testimony taken before them, if any, and they shall be entitled to the payment hereinafter provided for their services and expenses, to be paid from the fund hereinafter specified. The said commissioners may make a single report or may make reports from time to time as they shall reach their several decisions as to different parcels of property. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1895, ch. 519, § 21 and L. 1909, ch. 498, § 19*)

§ 49. Report of commissioners of appraisal. The said commissioners shall prepare a report or reports, to which shall be annexed the third set of maps or plans and memoranda referred to in section forty-two of this act and therein denominated the third set or a copy *there certified by them. Each said report shall contain a brief description of the property so taken or affected, with a reference to the map upon which the same is required to be indicated; a statement of the sums estimated and determined upon by them, as a just compensation for the same to be made by the city to the owners or persons interested therein and the names of such owners and persons; but in all and each and every case or cases where one or more of the owners and persons interested, or their respective estates or interests are unknown, or not fully known, to the commissioners of appraisal, it shall be sufficient for them to set forth and state in general terms the respective sums to be allowed and paid to the owners and persons interested therein, generally, without specifying the names or estates or interests of such owners or persons interested, or any or either of them. (*Added by L. 1894, ch. 752, § 9, as*

* So in original

amended by L. 1895, ch. 519, § 22 and L. 1909, ch. 498, § 19)

§ 50. **Filing of report.** Each said report, signed by said commissioners, or a majority of them, shall be filed in the office of the clerk of the county in which said city is situated, and the commissioners of appraisal shall, in each case, notify the counsel to the corporation, or other principal legal adviser to said city, as soon as such report is filed. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1905, ch. 519, § 23 and L. 1909, ch. 498, § 19)*)

§ 51. **Notice of motion to confirm report.** The counsel to the corporation, or other principal legal adviser, or, in case of his neglect to do so within ten days after receiving notice of such filing, then any person interested in the proceedings, shall give notice that the said report will be presented for confirmation to the supreme court, at a special term thereof, to be held in the judicial district in which said city is situated, at a time and place to be specified in said notice. The said notice shall contain a statement of the time and place of the filing of the report, and shall be published in two daily newspapers published in such city, for at least two weeks immediately prior to the presentation of said report for confirmation. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1905, ch. 519, § 24 and L. 1909, ch. 498, § 19)*)

§ 52. **Hearing and confirmation.** The application for the confirmation of each such report shall be made to the supreme court at a special term thereof, held in the judicial district in which said city is situated. Upon the hearing of the application for the confirmation thereof, the said court shall confirm such report and make an order containing a recital of the substance of the proceedings in the matter of the appraisal, with a general description of the property appraised and for which compensation is to be made, and shall also direct to whom the money is to be paid, and whether or not any part thereof, and if so, what part, is to be deposited by the comptroller or other chief financial officer of said city with the chamberlain of said city, or if there be no chamberlain, with a bank or trust company to

52 be designated by said court. Such report when so confirmed shall, except in the case of an appeal, as hereinafter provided, be final and conclusive, as well upon the said city as upon owners and all persons interested in or entitled to said property, and also upon all other persons whomsoever. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1895, ch. 519, § 25 and L. 1909, ch. 498, § 19*)

§ 53. Awards; actions for recovery. The said city shall, within four calendar months after the confirmation of any report of the commissioners of appraisal, pay to the respective owners and bodies politic or corporate mentioned or referred to in said report, in whose favor any sum or sums of money shall be estimated and reported by said commissioners, the respective sum or sums so estimated and reported in their favor respectively, with legal interest thereon from the date of filing the oath of said commissioners, and in case of neglect or default in the payment of the same within the time aforesaid, the respective person or persons or bodies politic or corporate, in whose favor the same shall be so reported, his, her or their executors, administrators, successors or assigns at any time or times after application first made by him, her or them, to the comptroller or other chief financial officer of said city for payment thereof, may sue for and recover the same, with lawful interest as aforesaid, and the costs of suit, in any proper form of action against the said city in any court having cognizance thereof, and in which it shall be sufficient to declare generally for so much money due to the plaintiff or plaintiffs therein by virtue of this act for property taken or extinguished for the purposes herein mentioned, and the report of said commissioners, with proof of the right and title of the plaintiff or plaintiffs to the sum or sums demanded, shall be conclusive evidence in such suit or action. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1895, ch. 519, § 26 and L. 1909, ch. 498, § 19*)

§ 54. Payment of awards to city chamberlain in certain cases. Whenever the owner or owners, person or persons interested in any property taken or affected in such pro-

ceedings, or in whose favor any such sum or sums or compensation shall be so reported, shall be under the age of twenty-one years, or of unsound mind or absent from the city, and also in all cases where the name or names of the owner or owners, person or persons, interested in any such property shall not be set forth or mentioned in said report, or where the said owner or owners, person or persons, being named therein, can not, upon diligent inquiry, be found, or where there are adverse or conflicting claims to the money awarded as compensation, it shall be lawful for the said city to pay the sum or sums mentioned in said report, payable or that would be coming to such owner or owners, person or persons, respectively, with interest, as aforesaid, to the chamberlain of said city, or, if there be no chamberlain, then to any bank or trust company designated by the court in the order confirming the report of the commissioners of appraisal, to the credit of such owner or owners, person or persons, and such payment shall be as valid and effectual in all respects as if made to the said owner or owners, person or persons, interested therein, respectively, according to their just rights; and, provided, also, that in all and each and every such case and cases where any sum or sums or compensation reported by the commissioners in favor of any person or persons or parties whatsoever, whether named or not named in said report, shall be paid to any person or persons, or party or parties, whomsoever, when the same shall of right belong and ought to have been paid to some other person or persons, or party or parties, it shall be lawful for the person or persons, or party or parties, to whom the same ought to have been paid, to sue for and recover the same, with lawful interest and costs of suit, as so much money had and received to his, her or their use by the person or persons, party or parties, respectively, to whom the same shall have been so paid. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1904, ch. 498, § 19*)

§ 55. Presentation of claims for compensation. Every owner or person in any way interested in any property

55 taken or extinguished as contemplated in this act, if he intends to make claim for compensation for such taking or extinguishment, shall within six months after the appointment of the commissioners of appraisal exhibit to the said commissioners a statement of his claim, and shall thereupon be entitled to offer testimony and to be heard before them touching such claim and the compensation proper to be made to him, and to have a determination made by such commissioners of appraisal as to the amount of such compensation. Every person neglecting or refusing to present such claim within said time shall be deemed to have surrendered his claim for such compensation, except so far as he may be entitled, as such owner or person interested, to the whole or a part of the sum of money awarded by the commissioners of appraisal as a just compensation for taking or extinguishing the property owned by said person, or in which the said person is interested. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1901, ch. 587 and L. 1909, ch. 498, § 19*)

§ 56. City protected. Payment of the compensation awarded by said commissioners of appraisal to the persons named in their report, if not infants or persons of unsound mind, shall, in the absence of notice to the said city or other claimants to such award, protect the said city. (*Added by 1894, ch. 752, § 9, as amended by L. 1909, ch. 498, § 19*)

§ 57. Reports on specified claims. Said commissioners of appraisal may in their discretion take up any specified claim or claims, and finally ascertain and determine the compensation to be made thereon, and make a separate report with reference thereto, annexing to said report a copy of so much of the set of maps or plans and memoranda referred to in section forty-two of this act as indicates the property so reported on. Such report shall, as to claims therein specified, be the report required in this act, and the subsequent action with reference thereto, shall be had in the same manner as though no other claim were embraced in said proceeding, which, however, shall continue as to all

claims upon which no such determination and report is made. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1895, ch. 519, § 27 and L. 1909, ch. 498, § 19*)

§ 58. Appeals; new appraisals. Within twenty days after notice of the confirmation of the report of the commissioners, as provided for in section fifty-two of this act, which notice may, as to parties who have not appeared before the commissioners, be given in the manner provided in section fifty-one of this act, either party may appeal to the appellate division of the supreme court in the department in which such commissioners were appointed, from the appraisal and report of the commissioners and the order confirming the same. Such appeal shall be heard upon due notice thereof being given, according to the rules and practice of said court. On the hearing of such appeal the court may direct a new appraisal and determination of any question passed upon, by the same or new commissioners, in its discretion, and from any determination of the appellate division either party, if aggrieved, may take an appeal, which shall be heard and determined by the court of appeals. In the case of a new appraisal the second report shall be final and conclusive on all the parties and persons interested. If the amount of compensation to be made by such city is increased by the second report, the difference shall be paid by the comptroller or other chief financial officer of said city, to the parties entitled to the same, or shall be deposited with the chamberlain, or bank or trust company, as the court may direct, and if the amount is diminished the difference shall be refunded to the said city by the party to whom the same may have been paid, and judgment therefor may be rendered by the court on the filing of the second report against the party liable to pay the same. But the taking of an appeal by any person or persons shall not operate to stay the proceedings under this act except as to the particular property with which the said appeal is concerned. Such appeal shall be heard upon the evidence taken before said commis-

58 sioners, and any affidavits as to irregularities, and three printed copies of such evidence shall be furnished by the said city to the party taking the appeal, within ten days after the appeal is perfected, and such appeal may be heard on the evidence so furnished, and may be taken without security thereon. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1909, ch. 498, § 19*)

§ 59. Amendment of proceedings; removal of commissioners of appraisal. The supreme court in the judicial district in which said city is situated shall have power at any time to amend any defect or informality in any of the special proceedings authorized by this act as may be necessary, and to direct such further notices to be given to any party in interest as it deems proper, and also to appoint other commissioners in place of any who shall die, or refuse or neglect to serve or be incapable *or serving or be removed. And the said court may at any time remove any commissioner of appraisal who in its judgment shall be incapable of serving, or who shall for any reason in its judgment be an unfit person to serve as such commissioner. The cause of such removal shall be specified in the order making the same. If in any particular it shall at any time be found necessary to amend any pleading or proceeding or to supply any defect therein arising in the course of any special proceeding authorized by this act, the same may be amended or supplied in such manner as shall be directed by the supreme court, which is hereby authorized to make such amendment or correction. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1895, ch. 519, § 28 and L. 1909, ch. 498, § 19*)

§ 60. Property deemed acquired for public use. All property acquired under the provisions of this act shall be and shall be deemed to have been acquired for public uses and purposes, and for the purpose of affording increased facilities for rapid transit between points within

*So in original

the city acquiring such property. (*Added by L. 1894, ch. 60
752, § 9, as amended by L. 1909, ch. 498, § 19*)

§ 61. Cost of acquiring property payable from proceeds of bonds. The moneys necessary and sufficient to be paid for any property, acquired in any manner under the provisions of this act, together with all expenses necessarily incurred in surveying, locating and acquiring title to such property, and for surveying and locating the same, and for preparing the necessary maps and plans in connection therewith, shall be raised and paid out of the proceeds of bonds issued and sold as provided by section thirty-seven of this act, and all such expenses so incurred in surveying, locating and acquiring title, and for preparing necessary maps and plans and also those incurred as provided in the next section shall be deemed a part of and included in the cost of constructing the road or roads, the construction of which rendered it necessary to acquire the property in the course of the acquisition of which such expenses may be incurred. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1895, ch. 519, § 29 and L. 1909, ch. 498, § 19*)

§ 62. Payment of commissioners of appraisal. The commissioners of appraisal appointed in pursuance of this article shall receive as compensation the sum of ten dollars per day for each day actually employed. The corporation counsel or other principal legal adviser to said city shall, either in person or by such counsel as he shall designate for the purpose, appear for and protect the interests of the city in all such proceedings in court and before the commissioners. The corporation counsel shall appoint clerks to the commissioners of appraisal in all such proceedings and shall furnish to the commissioners of appraisal in each proceeding suitable offices and such employees as they may require in conducting their proceedings and preparing their reports for presentation to the supreme court for confirmation. The fees of the commissioners and all other necessary expenses in and about the said proceedings provided for by this act and such

62 allowance for counsel fees as may be made by order of the court, and all reasonable expenses incurred by said corporation counsel, or other principal legal adviser of said counsel designated by him for the proper presentation and defense of the interests of said city before said commissioners and in court, shall be paid by the comptroller or other chief financial officer of said city out of the funds referred to in the last preceding section. But such fees and expenses shall not be paid until they have been taxed before a justice of the supreme court in the judicial district in which said city is situated upon five days' notice to the corporation counsel, or other chief legal adviser of said city. Such allowance shall in no case exceed the limits prescribed by section thirty-two hundred and fifty-three of the code of civil procedure. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1909, ch. 498, § 19 and L. 1910, ch. 205*)

§ 63. **Proviso in case road constructed by city.** Any railroad or railroads, so constructed by and at the city's expense shall be and remain the absolute property of the city so constructing it or them, and shall be and be deemed to be a part of the public streets and highways of said city, to be used and enjoyed by the public upon the payment of such fares and tolls, and subject to such reasonable rules and regulations as may be imposed and provided for by the board of rapid transit railroad commissioners in said city or by the public service commission. (*Added by L. 1894, ch. 752, § 9, as amended by L. 1895, ch. 519, § 30 and L. 1909, ch. 498, § 19*)

§ 64. **Construction of article.** This act shall not be construed to repeal or in any manner affect chapter six hundred and six of the laws of eighteen hundred and seventy-five, entitled "An act to further provide for the construction and operation of a steam railway or railways in the counties of this state," or the acts amendatory thereto or supplementary thereto, or article five of five hundred and sixty-five of the laws of eighteen hundred and ninety, known as the railroad law, except so far as the said acts,

or either of them, would, if this act had not been passed, authorize the appointment hereafter of any commissioners applied for as provided in section one of said act of eighteen hundred and seventy-five, or in section one hundred and twenty of said act of eighteen hundred and ninety, in any city or cities containing a population of over one million inhabitants, according to the last preceding national or state census, or authorize any commissioners already appointed pursuant to the provisions of such act or acts in any such city or cities, to fix, determine or locate any new route or routes, pursuant to the provisions of either of said acts. This act shall not be construed in any manner to affect the exercise or enjoyment at any time, and from time to time hereafter, of any right or rights heretofore acquired, exercised or enjoyed by any corporation heretofore duly incorporated and organized or deriving powers and rights under the laws of this state. This act shall not affect or impair the exercise or enjoyment of any right or rights now possessed or heretofore acquired or heretofore authorized to be acquired, exercised or enjoyed by any street surface railroad corporation, except as herein otherwise expressly provided, and this act shall not be construed to repeal or in any manner affect chapter one hundred and forty of the laws of eighteen hundred and fifty, entitled "An act to authorize the formation of railroad corporations, and to regulate the same," or either of the several acts amendatory thereof or supplementary thereto. This act shall not be construed to repeal or in any manner affect chapter five hundred and sixty-five of the laws of eighteen hundred and ninety, known as the railroad law, except as hereinabove expressly provided, or except so far as the provisions of the same conflict with the provisions of this act. But nothing in this section contained shall prevent the public service commission from laying out a route for a railroad and constructing and operating a railroad, and such commission shall have the right to lay out such route and construct and operate

64 such railroad over, under, along or across any street in, along, under or over which there shall be any existing railroad, provided that the routes so laid out by the commission and the railroad so constructed by it shall so pass over or under or at the side of such existing railroad as not to interfere with its operation. (*L. 1891, ch. 4, § 34, as amended by L. 1894, ch. 752, § 9; L. 1895, ch. 519, § 31; L. 1906, ch. 472, § 11 and L. 1909, ch. 498, § 19*)

*§ 65. **Repealing clause.** All acts and parts of acts, local or general, inconsistent with this act are hereby repealed. (*L. 1891, ch. 4, § 36, as amended by L. 1894, ch. 752, § 9; L. 1906, ch. 472, § 12 and L. 1909, ch. 498, § 19*)

*§ 66. This act shall take effect immediately. (*Laws 1891, ch. 4, § 37, as amended by L. 1894, ch. 752, § 9, and L. 1906, ch. 472, § 12*)

*These sections were renumbered by the amendment of 1906, which was made necessary by the repeal of the former section 65 of the Rapid Transit Act. The section so repealed prohibited the construction of surface roads in the city streets, under the provisions or authority of this act, except where necessary for connections with bridges, etc.

Section 14, of chap. 472, Laws of 1906, which took effect May 16, 1906, provides that nothing in this act contained shall repeal, modify or alter any provision of the act hereby amended in respect of any railway or railways constructed, constructing or contracted for thereunder when this act takes effect; but the act hereby amended shall be and continue in full force and effect in respect of such railway or railways so constructed, constructing, or contracted for, as if this act had not been passed."

LAWS 1894, CHAP. 752

NOTE.—The following sections of the Act of 1894 (Chapter 752) do not, *in terms*, amend any portion of the Rapid Transit Act of 1891, although the whole Act of 1894 is, in fact, an amendment of the earlier statute. These sections are accordingly numbered with respect to their position in the Act of 1894, and without reference to the numbering of the sections in the original act.

§ 11. The commissioners of rapid transit heretofore appointed under the act hereby amended, or who became such commissioners by its terms, upon the organization of the board which shall succeed them pursuant to said act as hereby amended, shall cease to be such commissioners and shall transfer and deliver to the board of rapid transit railroad commissioners, provided for by the act hereby amended, as so amended, all furniture, books, maps, records, plans and other papers and property of what kindsoever appertaining or belonging to or in the custody of the board of which they were commissioners, or in their possession, or under their control as such commissioners, or held by them, or for which they are responsible in their official capacity. The expenses incurred by said commissioners for which an appropriation or appropriations shall have been made pursuant to section ten of the act hereby amended, shall be paid upon vouchers to be furnished by said commissioners and otherwise, as provided in said section. Said commissioners shall also be entitled to receive a reasonable compensation for the services which have been rendered by them, which may have been, or which shall be, determined on their application in the manner provided for in said section. The comptroller, or other chief financial officer of said city, is hereby authorized and directed to issue and sell revenue bonds of such city in anticipation of the receipt of taxes, and out of the proceeds of such bonds to pay said compensation so ascertained and determined, and the amount necessary to pay the principal and interest of said bonds shall be included

in the tax levy of said city for the year next following the issue and sale of the same. (*New section, L. 1894, ch. 752, § 11*)

§ 12. The said board of rapid transit railway commissioners shall cause the question, whether such railway or railways shall be constructed by the city and at the public expense, to be submitted to the vote of the qualified electors of the city within which such railway or railways is or are to be constructed, and to that end it shall be the duty of the said board, after completion of the detailed plans and specifications, as required by the act hereby amended, at least thirty days prior to the next general election, to file with the public officer or officers within the county in which such city is located, who may be charged with the duty of printing the ballots to be used at such election, a request that separate ballots be printed and supplied to such electors, one-half in number of which shall read: "For municipal construction of rapid transit road," and the other half in number of said ballots shall read, "Against municipal construction of rapid transit road." Upon such request being so filed, such ballots shall be printed and supplied to such electors at such general election, and separate ballot boxes shall be provided for the reception of the same in each election district within such city, and the provisions of chapter six hundred and eighty of the laws of eighteen hundred and ninety-two, entitled "An act in relation to the elections constituting chapter six of the general laws," and any act or acts amendatory thereof or supplemental thereto shall apply thereto as far as the nature of the case may allow. No ballot which may be provided under this section shall be deemed invalid by reason of any error in dimensions, style of printing, or other formal defect, or through having been deposited in the wrong ballot box, but all of such ballots shall be canvassed and returned as if such formal defect had not existed, or as if they had been deposited in the box provided for the purpose. Upon the

canvass of such votes by the board of county canvassers of the county in which such city is located, it shall be the duty of said board to file with the county clerk of said county a statement which shall declare the total number of votes cast in said city "for municipal construction of rapid transit road," and the total number so cast therein "against municipal construction of rapid transit road." And the said railway or railways shall be constructed by the said city and at the public expense, if it shall be found from such statements so filed that there is a majority of the votes so cast in favor of such municipal construction. (*New section, L. 1894, ch. 752, § 12*)

§ 13. In case the majority of votes cast at such election shall be in favor of such municipal construction of said railway or railways, it shall be the duty of said board of rapid transit railway commissioners, within thirty days after the official declaration of the said vote to proceed to construct the said railway or railways, and to make and let all contracts required for the performance of the work necessary to be done and performed in and about the construction thereof. All such contracts must, before execution, be approved as to form by the counsel to the corporation, or other chief legal adviser for said city. (*New section, L. 1894, ch. 752, § 13*)

§ 14. This act shall take effect immediately; except that the building of said road, or the sale of the franchises as provided for in sections seven and thirty-four of the act hereby amended, as so amended, is postponed until, and made dependent upon, the determination of that question by the vote of the people as called for by sections twelve and thirteen of this act. (*New section, L. 1894, ch. 752, § 14*)

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